

EXHIBIT

A

LK NUTRITION, LLC, )  
Plaintiffs, ) Civil No. 12-cv-07905  
vs. )  
PREMIER RESEARCH LABS, LP )  
and ROBERT J. MARSHALL, )  
individually, )  
Defendants. )

April 17, 2015

10:12 a.m.

Reported By:  
Sheri E. Liss, CSR, RPR, CRR, CLR, RSA  
Job No. 38448

<p style="text-align: right;">26</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 the United States Coast Guard, United States Navy,</p> <p>3 NOAA, which is National Oceanic and Atmospheric</p> <p>4 Administration. We made ships, not boats. We</p> <p>5 weren't making 30-foot boats in Belmont Harbor. Our</p> <p>6 ships are being used around the world.</p> <p>7 <b>Q. You're also on the board at TV Compass</b></p> <p>8 <b>Incorporated from 2003 and you state "until sale."</b></p> <p>9 <b>Do you recall when the sale of the</b></p> <p>10 <b>company was?</b></p> <p>11 A. Approximately 2009.</p> <p>12 <b>Q. What kind of company is TV Compass?</b></p> <p>13 A. TV Compass was, I think it originated,</p> <p>14 the formation in 1983. The founders invented the</p> <p>15 universal remote control and took it public under</p> <p>16 the name of Universal Electronics and then spun off</p> <p>17 this division to create remote controls with a</p> <p>18 screen, which are more ubiquitous now than when we</p> <p>19 started, with a screen and Wi-Fi enabled so you</p> <p>20 could interact with your remote control in a Wi-Fi</p> <p>21 environment. And we had a patent on TV Guide, so</p> <p>22 you would have the TV Guide on your remote.</p> <p>23 Now it's on the screen if you have</p> <p>24 a Direct TV or Comcast application. But -- which</p> <p>25 interferes with your viewing. Here it's on your</p>	<p style="text-align: right;">28</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 <b>What is EPAY Systems?</b></p> <p>3 A. EPAY is an electronic pay. They have a</p> <p>4 number of patented products but their principal</p> <p>5 product is a time clock with five components. So if</p> <p>6 your employees came in today to punch in they would</p> <p>7 punch in with a biometric device, so they would</p> <p>8 punch in with their thumb print. It has a screen on</p> <p>9 it. It has a printer on it.</p> <p>10 So if you punched in, today is</p> <p>11 Friday, Cubs are playing today. If you would punch</p> <p>12 in it would say "Good morning, Paul. Do you want</p> <p>13 your paycheck?" And you would say yes.</p> <p>14 So if you had ten remote locations</p> <p>15 you wouldn't have to have a paycheck delivered, it</p> <p>16 would be there electronically. It would print out.</p> <p>17 It would eliminate payroll theft because you</p> <p>18 couldn't punch me in without my thumb. And it has a</p> <p>19 cellular device embedded in it so when I punch in it</p> <p>20 goes out via cellular through the EPAY network to</p> <p>21 your network so you know I punched in.</p> <p>22 And it's got a patent on a</p> <p>23 component screen, keyboard, printer, biometric</p> <p>24 device, cell phone combination. And they compete</p> <p>25 with companies like ADP, Paycheck, Kronos, in the</p>
<p style="text-align: right;">27</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 remote and that's patented.</p> <p>3 <b>Q. You're also on the board at Evolve</b></p> <p>4 <b>Solutions Incorporated from 2003 until sale.</b></p> <p>5 <b>Do you recall the date of sale of</b></p> <p>6 <b>Evolve Solutions?</b></p> <p>7 A. No. Approximately the same time -- it</p> <p>8 was a spinoff, it was a subset of TV Compass where</p> <p>9 it maintained a license to sell remotes in certain</p> <p>10 categories and product areas that -- when we merged</p> <p>11 with -- Evolve Communications merged with a company</p> <p>12 called TV Compass, we kept the TV Compass name and</p> <p>13 spun off Evolve Solutions with a license for certain</p> <p>14 products just in the United States market.</p> <p>15 <b>Q. So Evolve Solutions was still owned by</b></p> <p>16 <b>TV Compass?</b></p> <p>17 A. No. It was owned by -- the original</p> <p>18 owners of Evolve Communications maintained a hundred</p> <p>19 percent ownership of Evolve Solutions and in the</p> <p>20 merger 60 percent of TV Compass.</p> <p>21 <b>Q. And there is some agreement to that</b></p> <p>22 <b>effect, right?</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. What about EPAY Systems Incorporated?</b></p> <p>25 <b>You were on that board from 2008 and still are.</b></p>	<p style="text-align: right;">29</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 payroll space.</p> <p>3 <b>Q. So throughout your career you've held</b></p> <p>4 <b>positions that essentially require your consulting</b></p> <p>5 <b>skills, correct?</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. Have you ever consulted for dietary</b></p> <p>8 <b>supplement companies?</b></p> <p>9 A. No.</p> <p>10 <b>Q. Have you ever conducted business</b></p> <p>11 <b>valuation services for dietary supplement companies?</b></p> <p>12 A. No.</p> <p>13 <b>Q. Have you had any experience in your</b></p> <p>14 <b>positions that we just discussed providing services</b></p> <p>15 <b>for a dietary supplement company?</b></p> <p>16 A. Not that I recall.</p> <p>17 <b>Q. Like I said earlier, I know that you've</b></p> <p>18 <b>been deposed before because I actually deposed you</b></p> <p>19 <b>sometime last year, but how many depositions have</b></p> <p>20 <b>you given as an expert witness?</b></p> <p>21 A. Was I considered an expert witness in</p> <p>22 that 30(b)(6) deposition? Would that be included</p> <p>23 your definition?</p> <p>24 <b>Q. I don't have a definition. I'm just</b></p> <p>25 <b>asking you --</b></p>

54

1           **DEPOSITION OF PAUL DUGGAN**  
2       A.   Yes.  
3       **Q.   You've never seen her tax returns; is**  
4       **that what you just stated?**  
5       A.   Correct.  
6       **Q.   How would you determine whether or not**  
7       **Fitness Arts is a successful company?**  
8       A.   I'm looking at the volume of their  
9       sales, half a million dollars a year in product  
10      sales.  
11      **Q.   Do you know when Fitness Arts came into**  
12      **business?**  
13      A.   About 1992. I list their sales here  
14      from inception.  
15      **Q.   You don't know from memory?**  
16      A.   I just said I think '92, but I have the  
17      answer here.  
18      **Q.   Okay. I have that document.**  
19      A.   2003.  
20      **Q.   So Fitness Arts was -- came into**  
21      **existence in 2003; is that your testimony?**  
22      A.   Those are the first records I saw, so as  
23      far as I know, the first sales were 2003. There may  
24      have been more prior to that.  
25      **Q.   Do you know when Mia Scheid became**

55

1           **DEPOSITION OF PAUL DUGGAN**  
2       **affiliated with Fitness Arts?**  
3       A.   No.  
4       **Q.   Do you know when Lee Kemp became**  
5       **affiliated with Fitness Arts?**  
6       A.   No.  
7       **Q.   Do you know in what capacity he was**  
8       **affiliated with Fitness Arts? I have the documents**  
9       **so I don't need a recitation of that. I'm asking**  
10      **you these questions.**  
11      A.   Do I know the date that he started  
12      working with Fitness Arts? No.  
13      **Q.   Do you know in what capacity he was**  
14      **affiliated with Fitness Arts?**  
15      A.   Product development, marketing.  
16      **Q.   And that's for Fitness Arts?**  
17      A.   Yes.  
18      **Q.   Do you know how many employees there are**  
19      **at Fitness Arts?**  
20      A.   No.  
21      **Q.   So you don't know their names?**  
22      A.   I've dealt with them, specifically I've  
23      dealt with their accountant, a Karen; I think it's  
24      Karen Manna, M-a-n-n-a.  
25      **Q.   Any other employees that you recall?**

56

1           **DEPOSITION OF PAUL DUGGAN**  
2       A.   Not offhand, no.  
3       **Q.   What services does Fitness Arts provide?**  
4       A.   They sell nutritional products and  
5       provide health and fitness services.  
6       **Q.   I'm going to ask that you put that**  
7       **Exhibit 2 to the side for a second.**  
8       A.   Okay.  
9       **Q.   Do you know whether or not they provide**  
10      **any other services?**  
11      A.   Such as?  
12      **Q.   Well, you stated nutritional supplements**  
13      **and --**  
14      A.   Health and fitness services.  
15      **Q.   Health and fitness services.**  
16            **Do you know whether or not they**  
17      **provide any other services?**  
18      A.   I don't know.  
19      **Q.   When you say "health and fitness**  
20      **service," what is does that encompass?**  
21      A.   They have a facility where there might  
22      be health and fitness services performed.  
23      **Q.   When you say "fitness service" --**  
24      A.   Exercise, massage therapy, perhaps  
25      infrared saunas. It could be any number of

57

1           **DEPOSITION OF PAUL DUGGAN**  
2       services. Could be.  
3       **Q.   What do you base your knowledge of what**  
4       **Fitness Arts, what services they provide, what do**  
5       **you base that on?**  
6       A.   Their financial statements.  
7       **Q.   Anything else?**  
8       A.   Talking to Karen.  
9       **Q.   Did you list Karen as a person or a**  
10      **material you relied upon in the preparation of your**  
11      **report today?**  
12      A.   No. She provided me with the accounting  
13      statements which are listed in here so I don't know  
14      how many people prepared an accounting statement.  
15      **Q.   You said you spoke to her. That's**  
16      **information you relied upon in determining what kind**  
17      **of services that Fitness Arts provides?**  
18      A.   I spoke to her regarding the financial  
19      statements and who the CPA was that prepared them so  
20      I could talk to that person.  
21      **Q.   In your report, you state that Fitness**  
22      **Arts' supplement sales progressed from 2001-2002**  
23      **from \$10,000 per year to \$500,000 per year in sales**  
24      **by 2011-2012.**  
25            **Do you recall that?**

15 (Pages 54 to 57)

70

1 DEPOSITION OF PAUL DUGGAN

2 Q. Between 2003 and now?

3 A. No.

4 Q. So this 2010 document shows sales

5 summaries from March 2010 to December 2010, correct?

6 A. Yes.

7 Q. It's not the full year, right?

8 A. It appears to be March through December.

9 Q. Right. So it's not the full year?

10 A. Correct.

11 Q. And you see at the top left-hand corner

12 a date of 3/5/2015?

13 A. Yes.

14 Q. Do you know what that indicates?

15 A. I'd have to guess.

16 Q. What would your guess be?

17 A. Is when they printed it.

18 Q. And this document is a little different

19 than the ones we've been looking at, correct? It

20 actually shows the amount of supplements sold and

21 the different types. So it shows that PRL Labs, the

22 sales for those supplements was around \$450,000?

23 A. Yes.

24 Q. And it shows us the cost, right, which

25 is around \$273,000?

71

1 DEPOSITION OF PAUL DUGGAN

2 A. Yes.

3 Q. It shows you the profit margin?

4 A. Yes.

5 Q. Are you familiar with the products that

6 PRL Labs sells to Fitness Arts?

7 A. No.

8 Q. Do you know whether or not there is a

9 particular product geared towards wrestlers?

10 A. No.

11 Q. Do you know what the consumer, the

12 typical consumer of PRL Labs supplements are?

13 A. No.

14 Q. What kind of customers come into Fitness

15 Arts?

16 A. I consider them to be retail consumers.

17 Q. Is there a particular age group?

18 A. I don't know.

19 Q. Particular gender?

20 A. I don't know.

21 Q. Do you know if Fitness Arts has a target

22 market?

23 A. I don't know.

24 Q. Does Fitness Arts specifically target

25 wrestlers?

72

1 DEPOSITION OF PAUL DUGGAN

2 A. I don't know.

3 Q. Do you know what percentage of customers

4 that bought PRL supplements were wrestlers?

5 A. I don't know.

6 Q. Or bought it for wrestling purposes?

7 A. I don't know.

8 Q. So you're aware that the supplements PRL

9 provided to Fitness Arts were a PRL line, correct?

10 A. Yes.

11 Q. They weren't branded with Fitness Arts?

12 A. I don't know.

13 Q. Do you have any knowledge as to whether

14 or not Fitness Arts has its own line of dietary

15 supplements?

16 A. I don't know.

17 Q. Did you ever inquire as to whether or

18 not Fitness Arts has its own line of dietary

19 supplements?

20 A. No.

21 Q. Do you know what kind of products

22 Fitness Arts sells besides PRL supplements?

23 A. No.

24 Q. Are you aware that PRL markets its

25 products nationwide including on a syndicated radio

73

1 DEPOSITION OF PAUL DUGGAN

2 broadcast?

3 A. No.

4 Q. Do you know whether or not Fitness Arts

5 does any marketing with respect to the PRL products?

6 A. No.

7 Q. So in 2010 it shows that the sale of the

8 PRL supplements generated a 40 percent, about,

9 profit margin for Fitness Arts, correct?

10 A. 39, right. About 40.

11 Q. Did you ever review the tax returns for

12 2010 of Fitness Arts?

13 A. No.

14 Q. I'm going to mark this as Exhibit 4.

15 (Whereupon, Duggan Exhibit 4

16 marked as requested.)

17 (Whereupon, the document was

18 tendered.)

19 BY MS. ALIKHAN:

20 Q. I'll represent to you that this was a

21 tax return from 2010 for Fitness Arts.

22 Did you cross-reference the sales

23 summary with the tax return of 2010?

24 A. No.

25 Q. Can you tell whether or not this is a

19 (Pages 70 to 73)

<p style="text-align: right;">90</p> <p>1                   <b>DEPOSITION OF PAUL DUGGAN</b></p> <p>2       A.   Right. I took those pencilled out and</p> <p>3       reduced the 520 in sales to the 501,000 in sales in</p> <p>4       my sales recap on Page 12.</p> <p>5       <b>Q.   Do you know why this document looks</b></p> <p>6       <b>different than the once we've been looking at</b></p> <p>7       <b>before?</b></p> <p>8       A.   No.</p> <p>9       <b>Q.   Do you know who created this document?</b></p> <p>10      A.   No.</p> <p>11      <b>Q.   Can you tell it's for Fitness Arts?</b></p> <p>12      A.   It was provided to me representing</p> <p>13      Fitness Arts, but --</p> <p>14      <b>Q.   Nothing on the document indicates this.</b></p> <p>15      A.   Other than I got it from Fitness Arts,</p> <p>16      no.</p> <p>17      <b>Q.   Does this document show you the cost of</b></p> <p>18      <b>goods?</b></p> <p>19      A.   No.</p> <p>20      <b>Q.   Does it show you the profit margins?</b></p> <p>21      A.   No.</p> <p>22      <b>Q.   Do you know what percentage were PRL</b></p> <p>23      <b>products?</b></p> <p>24      A.   No.</p> <p>25           MS. ALIKHAN: I'm going to mark this as</p>	<p style="text-align: right;">92</p> <p>1                   DEPOSITION OF PAUL DUGGAN</p> <p>2       <b>Q.   Under "Merchandise Sales" there's a line</b></p> <p>3       <b>item for food and supplement sales, right?</b></p> <p>4       A.   Under --</p> <p>5       <b>Q.   Under "Ordinary Income," about three</b></p> <p>6       <b>lines down, the next line is "Merchandise Sales" and</b></p> <p>7       <b>under that there's something that says "Food and</b></p> <p>8       <b>Supplement Sales"?</b></p> <p>9       A.   Yes.</p> <p>10      <b>Q.   And that number is around \$38,000,</b></p> <p>11      <b>right?</b></p> <p>12      A.   That's correct.</p> <p>13      <b>Q.   Not the \$520,000 that's indicated on --</b></p> <p>14      <b>in your Schedule 4 for 2012, right?</b></p> <p>15      A.   Correct.</p> <p>16      <b>Q.   There's a discrepancy, isn't there?</b></p> <p>17      A.   No.</p> <p>18      <b>Q.   Why not?</b></p> <p>19      A.   Again, you're looking at two different</p> <p>20      reports, cash basis. If you would refer to -- I</p> <p>21      made the same comment as to Exhibit 6. If you</p> <p>22      looked at cost to goods sold, 324,000, you could not</p> <p>23      have 324,000 in costs for 36,000 in sales. So I'm</p> <p>24      looking at -- the total sales seem to be consistent</p> <p>25      with the company sales between 650,000 and 750,000</p>
<p style="text-align: right;">91</p> <p>1                   DEPOSITION OF PAUL DUGGAN</p> <p>2       Exhibit 7, I believe.</p> <p>3                   (Whereupon, Duggan Exhibit 7</p> <p>4                   marked as requested.)</p> <p>5                   (Whereupon, the document was</p> <p>6                   tendered.)</p> <p>7       BY MR. ALIKHAN:</p> <p>8       <b>Q.   May I ask what you're writing,</b></p> <p>9       <b>Mr. Duggan?</b></p> <p>10      A.   Yes. I have no memory so I'm writing</p> <p>11      down Exhibit 5 is the balance sheet and Exhibit 6 as</p> <p>12      P&amp;L.</p> <p>13      <b>Q.   Okay. Those documents are premarked so</b></p> <p>14      <b>there should be no confusion as to which is which.</b></p> <p>15      A.   I'm writing it down because sometimes</p> <p>16      you say don't look at it. From my memory. I'm</p> <p>17      trying to speed the process up. Exhibit 5 is a</p> <p>18      balance sheet and Exhibit 6 is a P&amp;L. That's what I</p> <p>19      wrote down here. And Forza or LK, which is what you</p> <p>20      told me.</p> <p>21      <b>Q.   So Exhibit 7 is a profit and loss</b></p> <p>22      <b>statement for Fitness Arts through 2012, right?</b></p> <p>23      A.   Let me look. Right.</p> <p>24      <b>Q.   Have you seen this document before?</b></p> <p>25      A.   I don't think so.</p>	<p style="text-align: right;">93</p> <p>1                   DEPOSITION OF PAUL DUGGAN</p> <p>2       over the period of time. And the cost of goods sold</p> <p>3       would be approximately 70 percent of a \$500,000 in</p> <p>4       sales, which is consistent with the 30 percent gross</p> <p>5       margins you were showing me on another document.</p> <p>6                   So when I look at it, I don't find</p> <p>7       it inconsistent with the company books and records</p> <p>8       but again, it's cash basis. Who inputted the sales</p> <p>9       versus the sales here, I don't know.</p> <p>10      <b>Q.   So that's your explanation for the</b></p> <p>11      <b>discrepancies, right?</b></p> <p>12      A.   Yes. Clearly this document is</p> <p>13      incorrect. Clearly.</p> <p>14                   MR. SOLON: Exhibit 7.</p> <p>15      BY THE WITNESS:</p> <p>16      A.   7. Or sloppily prepared. Maybe the net</p> <p>17      is okay, but it's sloppily prepared because you</p> <p>18      can't have 324,000 of cost to sell \$36,000 worth of</p> <p>19      product.</p> <p>20      BY MS. ALIKHAN:</p> <p>21      <b>Q.   You weren't given this document to</b></p> <p>22      <b>review, were you?</b></p> <p>23      A.   I was not.</p> <p>24      <b>Q.   You were just given this exhibit that we</b></p> <p>25      <b>spoke to in your Schedule 4 to determine the sales</b></p>

24 (Pages 90 to 93)

<p style="text-align: right;">102</p> <p>1           <b>DEPOSITION OF PAUL DUGGAN</b></p> <p>2       A.   No, I just said it wasn't.</p> <p>3       <b>Q.   Oh, it wasn't?</b></p> <p>4       A.   It wasn't. I asked questions. His</p> <p>5 deposition testimony wasn't one of the questions or</p> <p>6 documents that I asked for.</p> <p>7       <b>Q.   So I assume you didn't read Mia's dep</b></p> <p>8 <b>either?</b></p> <p>9       A.   That's correct.</p> <p>10       <b>Q.   The parties in this case.</b></p> <p>11       A.   The parties are LK Nutrition.</p> <p>12       <b>Q.   Comprised of Lee and Mia, right?</b></p> <p>13       A.   Those are investors in that company,</p> <p>14 yes.</p> <p>15       <b>Q.   They're members, aren't they?</b></p> <p>16       A.   They're members of the LLC.</p> <p>17       <b>Q.   They're Forza, aren't they? They're the</b></p> <p>18 <b>members of Forza?</b></p> <p>19       A.   That's my understanding they are. Lee</p> <p>20 and Mia.</p> <p>21       <b>Q.   They're the ones that would be most</b></p> <p>22 <b>knowledgeable as to the business and the goings on</b></p> <p>23 <b>in Forza, right?</b></p> <p>24       A.   In most instances, absolutely.</p> <p>25       <b>Q.   They're actually a party in this lawsuit</b></p>	<p style="text-align: right;">104</p> <p>1           <b>DEPOSITION OF PAUL DUGGAN</b></p> <p>2       <b>Q.   Did you --</b></p> <p>3       A.   I am a sports -- I used to be a walking</p> <p>4 sports encyclopedia. Do you want to know who won</p> <p>5 the 100 meter dash in the 1960 Rome Olympics?</p> <p>6       <b>Q.   No. I'm actually just interested in Mr.</b></p> <p>7 <b>Kemp.</b></p> <p>8       A.   A German, and he upset the American.</p> <p>9 I'll tell you who won the 200 meter race too, Livio</p> <p>10 Berruti from Italy. I am a sports nut.</p> <p>11           Famous wrestlers, he's in that</p> <p>12 short list of top 10 wrestlers of all time.</p> <p>13       <b>Q.   Did you Google that information in</b></p> <p>14 <b>preparation for your report?</b></p> <p>15       A.   I Googled -- yeah. In fact, I Googled</p> <p>16 top 10 wrestlers and depending on whose -- the point</p> <p>17 system used it would range Mr. Kemp, third, fourth,</p> <p>18 fifth or sixth all time.</p> <p>19       <b>Q.   What website did you see it on?</b></p> <p>20       A.   I couldn't tell you right now. If you</p> <p>21 Googled it right now, do it at lunch, you'll see</p> <p>22 most would rank Cael Sanderson, which I don't agree</p> <p>23 with, Bruce Baumgartner, Rulon Gardner, Lee Kemp</p> <p>24 ahead of Dan Gable, which I found surprising in</p> <p>25 terms of notoriety, but he's listed.</p>
<p style="text-align: right;">103</p> <p>1           <b>DEPOSITION OF PAUL DUGGAN</b></p> <p>2 <b>based on the caption, right?</b></p> <p>3       A.   Yes.</p> <p>4       <b>Q.   And you didn't find it prudent to read</b></p> <p>5 <b>their deposition testimony?</b></p> <p>6       A.   I'm calculating numbers, not their</p> <p>7 opinions.</p> <p>8       <b>Q.   Well --</b></p> <p>9       A.   I wanted the sales.</p> <p>10       <b>Q.   Okay. What was the purpose of Forza?</b></p> <p>11 <b>What type of company was Forza?</b></p> <p>12       A.   Looking to sell wrestling-related</p> <p>13 supplements into the wrestling community to take</p> <p>14 advantage of the marketing power of Lee Kemp's name.</p> <p>15       <b>Q.   What was the marketing power of</b></p> <p>16 <b>Mr. Kemp's name?</b></p> <p>17       A.   Noted to be one of the top 10 wrestlers</p> <p>18 of all time, well-known in the wrestling community,</p> <p>19 his work as a coach for the Olympic team,</p> <p>20 internationally known and respected in the wrestling</p> <p>21 community.</p> <p>22       <b>Q.   Where do you get that information from?</b></p> <p>23       A.   You could literally Google it.</p> <p>24       <b>Q.   Did you?</b></p> <p>25       A.   Yeah.</p>	<p style="text-align: right;">105</p> <p>1           <b>DEPOSITION OF PAUL DUGGAN</b></p> <p>2           MS. ALIKHAN: It's 12:30. I am going to</p> <p>3 take a break. I don't need long, but I don't know</p> <p>4 if people want to eat or do something other -- or if</p> <p>5 you want to press forward.</p> <p>6           THE VIDEOGRAPHER: We are off the</p> <p>7 record. The time is 12:37 p.m.</p> <p>8                   (Whereupon, there was a lunch</p> <p>9                   break.)</p>

27 (Pages 102 to 105)

<p style="text-align: right;">106</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 THE VIDEOGRAPHER: We're back on the</p> <p>3 record. The time is 1:36 p.m.</p> <p>4 EXAMINATION (continued)</p> <p>5 BY MS. ALIKHAN:</p> <p>6 Q. We just came back from a break,</p> <p>7 Mr. Duggan. I would like to direct your attention</p> <p>8 to Page 6 of your report. We'll start on Page 5.</p> <p>9 And in Paragraph 15, you state it's your opinion</p> <p>10 that "Ms. Scheid and Mr. Kemp had the ability to</p> <p>11 expand an already existing successful business by</p> <p>12 selling a proprietary line of nutritional</p> <p>13 supplements to athletes if the products had been</p> <p>14 supplied to them on a timely basis during the</p> <p>15 Olympic year which were not mislabeled and tainted</p> <p>16 by banned substances like DHEA."</p> <p>17 What company are you referencing or</p> <p>18 what successful business are you referencing?</p> <p>19 A. Fitness Arts and LK/Forza.</p> <p>20 Q. So the already existing business was</p> <p>21 Fitness Arts?</p> <p>22 A. LK Forza was basically a division of</p> <p>23 Fitness Arts and -- which was selling 500,000 a year</p> <p>24 in product. That's existing business.</p> <p>25 Q. What forms your basis that LK Nutrition</p>	<p style="text-align: right;">108</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 Q. No, you don't.</p> <p>3 Are you aware of deposition</p> <p>4 testimony by Mia Scheid stating that Mr. Kemp worked</p> <p>5 at Fitness Arts on and off between -- for 2008?</p> <p>6 A. I have not read her deposition.</p> <p>7 Q. I'll submit to you that Lee Kemp worked</p> <p>8 on and off for one year in 2008. Does that change</p> <p>9 your opinion that forms the -- does that change the</p> <p>10 basis of your opinion that Fitness Arts -- that</p> <p>11 Forza was extension of Fitness Arts?</p> <p>12 MR. SOLON: Object to foundation but</p> <p>13 we'll treat it as hypothetical.</p> <p>14 BY THE WITNESS:</p> <p>15 A. I don't think that's consistent with the</p> <p>16 facts in evidence so no, it doesn't.</p> <p>17 BY MS. ALIKHAN:</p> <p>18 Q. What are the objective facts that you</p> <p>19 relied on that indicate that Forza was an extension</p> <p>20 of Fitness Arts?</p> <p>21 A. Start with Schedule 1. Lee Kemp worked</p> <p>22 starting 2008, worked 9,000 hours.</p> <p>23 Q. One second. Let me get there. Schedule</p> <p>24 1 of your report?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">107</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 was an extension of Fitness Arts?</p> <p>3 A. Fitness Arts sold supplements, was</p> <p>4 already in business. Lee Kemp and Mia Scheid worked</p> <p>5 for Fitness Arts and were working for LK/Forza so</p> <p>6 they're one in the same.</p> <p>7 Q. Okay. How long did Mr. Kemp work for</p> <p>8 Fitness Arts?</p> <p>9 A. According to what he told me, he started</p> <p>10 in 2008.</p> <p>11 Q. How long did he work there for?</p> <p>12 A. I don't know if he's still working</p> <p>13 there. He's still in the business promoting</p> <p>14 wrestling but I'm not sure if he's still at Fitness</p> <p>15 Arts.</p> <p>16 Q. You don't know how long Mr. Kemp worked</p> <p>17 at Fitness Arts?</p> <p>18 A. I'm saying he started in 2008. I don't</p> <p>19 know if he's still there.</p> <p>20 Q. So you don't know how long he worked</p> <p>21 there?</p> <p>22 A. Same answer.</p> <p>23 Q. Is that a yes or a no?</p> <p>24 A. That's a do I know how long he worked</p> <p>25 there? No.</p>	<p style="text-align: right;">109</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 Q. Okay. Keep going.</p> <p>3 A. I thought I answered your question.</p> <p>4 Q. So your --</p> <p>5 THE WITNESS: Do you want to reread the</p> <p>6 question?</p> <p>7 (Whereupon, the record was</p> <p>8 read as requested.)</p> <p>9 BY THE WITNESS:</p> <p>10 A. Commonalty of employees, meaning Mia</p> <p>11 Lee; commonalty of product, meaning nutritional</p> <p>12 product. So it's like adding a product line, that's</p> <p>13 all. Just like we talked Nike was an existing</p> <p>14 business and they came up with Air Jordan using</p> <p>15 Michael Jordan's reputation. So Fitness Arts is a</p> <p>16 business and they come up with an extension under</p> <p>17 the LK name using Lee Kemp's reputation.</p> <p>18 BY MS. ALIKHAN:</p> <p>19 Q. Did you specifically see that</p> <p>20 information anywhere in the record besides Schedule</p> <p>21 1?</p> <p>22 A. That's conversations with Mr. Kemp.</p> <p>23 Q. When did you have those conversations?</p> <p>24 A. The last two months, March and April of</p> <p>25 2015.</p>

28 (Pages 106 to 109)



<p style="text-align: right;">110</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 <b>Q. You don't know what date?</b></p> <p>3 A. Correct.</p> <p>4 <b>Q. Who was present?</b></p> <p>5 A. Probably on the phone with me and Lee.</p> <p>6 <b>Q. It was you and Lee only on the phone?</b></p> <p>7 A. It could have been in a meeting with</p> <p>8 Dylan and Ray Niro.</p> <p>9 <b>Q. Did you cite any of these conversations</b></p> <p>10 <b>as the materials you relied upon in preparing the</b></p> <p>11 <b>opinions for your report today?</b></p> <p>12 A. My conversations with Lee Kemp. It's</p> <p>13 Mr. Kemp's testimony, not mine, that I'm relying on.</p> <p>14 <b>Q. His conversations, not testimony, right?</b></p> <p>15 A. I take that as evidence when he tells me</p> <p>16 something.</p> <p>17 <b>Q. But you never read his deposition to</b></p> <p>18 <b>confirm whether or not that's what he actually</b></p> <p>19 <b>testified to in this case, right?</b></p> <p>20 A. I've already answered that, right.</p> <p>21 <b>Q. So that's no, right?</b></p> <p>22 A. I did not read his deposition. No, I</p> <p>23 did not.</p> <p>24 <b>Q. Schedule 1, at the top of that,</b></p> <p>25 <b>indicates that this is a lost hours recap for LK</b></p>	<p style="text-align: right;">112</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 <b>that agreement on behalf of Forza?</b></p> <p>3 A. I don't --</p> <p>4 MR. SOLON: Object to form. You asked</p> <p>5 him if he recalled and he said he didn't recall and</p> <p>6 you asked him again.</p> <p>7 MS. ALIKHAN: You don't have to continue</p> <p>8 on. You can make the form and foundation objection.</p> <p>9 MR. SOLON: Don't ask the same questions</p> <p>10 over and over again.</p> <p>11 MS. ALIKHAN: You made your objection.</p> <p>12 Please don't tell me how to ask my questions.</p> <p>13 MR. SOLON: Someone should.</p> <p>14 MS. ALIKHAN: Thanks for your advice.</p> <p>15 BY MS. ALIKHAN:</p> <p>16 <b>Q. Did Passignano have any inclination LK</b></p> <p>17 <b>was an extension of Fitness Arts?</b></p> <p>18 A. I don't recall.</p> <p>19 <b>Q. Wouldn't that have made the investment</b></p> <p>20 <b>by Passignano less risky into Forza?</b></p> <p>21 A. That would be speculation.</p> <p>22 <b>Q. You don't know whether or not having an</b></p> <p>23 <b>established business record would make the</b></p> <p>24 <b>investment less risky than not?</b></p> <p>25 MR. SOLON: Object to form.</p>
<p style="text-align: right;">111</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 <b>Nutrition, right?</b></p> <p>3 A. Yes.</p> <p>4 <b>Q. Do you see anywhere on this document</b></p> <p>5 <b>that indicates this is also for Fitness Arts?</b></p> <p>6 A. No.</p> <p>7 <b>Q. Forza was actually incorporated in 2011,</b></p> <p>8 <b>right?</b></p> <p>9 A. That's my understanding.</p> <p>10 <b>Q. And did you see any contracts between</b></p> <p>11 <b>Fitness Arts and Forza?</b></p> <p>12 A. No.</p> <p>13 <b>Q. Did you see any agreement or licensing</b></p> <p>14 <b>agreement between Fitness Arts and Forza?</b></p> <p>15 A. No.</p> <p>16 <b>Q. Who signed the agreement between</b></p> <p>17 <b>Passignano and Forza on behalf of Forza?</b></p> <p>18 A. I don't recall.</p> <p>19 <b>Q. Was Fitness Arts a party to that</b></p> <p>20 <b>contract?</b></p> <p>21 A. I don't recall.</p> <p>22 <b>Q. You were the 30(b)(6) for Passignano,</b></p> <p>23 <b>weren't you?</b></p> <p>24 A. I was.</p> <p>25 <b>Q. And you don't recall who entered into</b></p>	<p style="text-align: right;">113</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 BY THE WITNESS:</p> <p>3 A. That's confusing. Is that a follow-on</p> <p>4 question? You might have to go back four questions.</p> <p>5 I am not sure where you are at here.</p> <p>6 BY MS. ALIKHAN:</p> <p>7 <b>Q. My question to you is would having an</b></p> <p>8 <b>established business record when considering</b></p> <p>9 <b>investing into a company, wouldn't that make the</b></p> <p>10 <b>investment less risky?</b></p> <p>11 MR. SOLON: Object to form.</p> <p>12 BY MS. ALIKHAN:</p> <p>13 <b>Q. Do you understand the question?</b></p> <p>14 A. I understand the question.</p> <p>15 <b>Q. What is your answer?</b></p> <p>16 A. I think there is an established business</p> <p>17 here, which is Fitness Arts, with the same people,</p> <p>18 Mia and Lee, with funding from Passignano which</p> <p>19 makes it less risky.</p> <p>20 <b>Q. You didn't know whether or not</b></p> <p>21 <b>Passignano had that information when it decided to</b></p> <p>22 <b>invest in Forza, did you?</b></p> <p>23 A. I said I don't recall that. What I'm</p> <p>24 saying is this isn't about Passignano, it's about</p> <p>25 Fitness Arts and LK.</p>

114

1 DEPOSITION OF PAUL DUGGAN

2 Q. And I'm asking you a question with

3 respect to whether or not the investor knew that

4 Fitness Arts was an extension of Forza at the time

5 it determined it was going to invest in Forza?

6 A. They didn't invest. Passignano is not

7 an investor, it's a lender.

8 Q. At the time it decided to lend money to

9 Forza.

10 A. Ask the question again because you just

11 switched it.

12 MS. ALIKHAN: Can you repeat the

13 question again for the witness.

14 (Whereupon, the record was

15 read as requested.)

16 MR. SOLON: Object to the foundation for

17 the question that was just read back.

18 BY MS. ALIKHAN:

19 Q. Go ahead and answer.

20 A. I answered that Passignano is not an

21 investor.

22 Q. At the time Passignano decided to loan

23 money to Forza, did it have knowledge that Fitness

24 Arts -- that Forza was an extension of Fitness Arts?

25 A. Yes.

115

1 DEPOSITION OF PAUL DUGGAN

2 Q. You gave a deposition in this case May

3 6, 2014 as a 30(b)(6) witness for Passignano,

4 correct?

5 A. Is that the right date? I don't have a

6 memory of the date.

7 Q. You gave a deposition, right?

8 A. I did give a deposition.

9 Q. And you gave an oath to tell the truth

10 in that deposition?

11 A. I did.

12 Q. And you did tell the truth in that

13 deposition, didn't you?

14 A. I assume I did.

15 Q. And you testified to some of the risks

16 that were calculated in deciding to lend Forza money

17 during that deposition.

18 Do you recall that?

19 A. I don't recall my testimony. You want

20 me to reread the deposition?

21 Q. No.

22 A. Okay. I don't recall.

23 Q. One of the risks that you testified to

24 in Passignano loaning money to Forza was that --

25 would be the performance of Premier to make the

116

1 DEPOSITION OF PAUL DUGGAN

2 product correctly.

3 Do you recall that?

4 A. I don't recall my deposition testimony.

5 Q. Do you recall stating that another risk

6 would be that Forza was a start-up company with no

7 track record?

8 A. I don't recall my testimony.

9 Q. Do you have any reason to doubt that

10 that's what you stated?

11 A. I have -- I don't recall my testimony.

12 If you want to give me the deposition, I'm happy to

13 read it.

14 Q. I'll hand you your deposition.

15 MR. SOLON: Let me see it.

16 (The document was tendered.)

17 MR. SOLON: Okay. Page please?

18 MS. ALIKHAN: 50. Line 5.

19 BY MS. ALIKHAN:

20 Q. Are you done reading it?

21 A. No.

22 Q. Did you say that, Mr. Duggan?

23 A. Did I say what?

24 Q. In response to my question:

25 "Would one of the risks be that

117

1 DEPOSITION OF PAUL DUGGAN

2 Forza was a start-up company with no track record?

3 "ANSWER: Forza is a risk, yes."

4 A. If that's my answer in the deposition,

5 that's fine.

6 Q. Which entity signed the agreement

7 between the USAW, Forza or Fitness Arts?

8 A. I don't recall.

9 Q. Which entity owned the patent

10 applications?

11 A. I don't recall.

12 Q. Did Fitness Arts' name or trademark

13 appear on any of the LK/Forza products or marketing

14 materials?

15 A. I don't know.

16 Q. Did you ask?

17 A. No.

18 Q. Did you ask who owned the patent

19 applications?

20 A. No.

21 Q. Did Forza -- did Fitness Arts sell Forza

22 products in its stores?

23 A. I don't know.

24 Q. Did you ask?

25 A. No.

<p style="text-align: right;">126</p> <p>1                   <b>DEPOSITION OF PAUL DUGGAN</b></p> <p>2   referenced a little bit ago?</p> <p>3       A.   Yes.</p> <p>4       <b>Q.   On the phone or in person?</b></p> <p>5       A.   Yes.</p> <p>6       <b>Q.   In March or April of this year?</b></p> <p>7       A.   Yes.</p> <p>8       <b>Q.   You can't recall the dates?</b></p> <p>9       A.   I do not recall the dates.</p> <p>10      <b>Q.   You don't know if it was on the phone or</b></p> <p>11 <b>if it was in person?</b></p> <p>12      A.   Or both.</p> <p>13      <b>Q.   You don't know how many conversations</b></p> <p>14 <b>you had?</b></p> <p>15      A.   Correct.</p> <p>16      <b>Q.   Is there any information on your</b></p> <p>17 <b>invoices or billings that would help to refresh your</b></p> <p>18 <b>recollection as to when these conversations took</b></p> <p>19 <b>place?</b></p> <p>20      A.   No idea.</p> <p>21      <b>Q.   You don't know?</b></p> <p>22      A.   I don't know what my billings look like.</p> <p>23      <b>Q.   Is it typical to have entries for phone</b></p> <p>24 <b>calls that you have with clients?</b></p> <p>25      A.   I've only done two of these cases in 15</p>	<p style="text-align: right;">128</p> <p>1                   <b>DEPOSITION OF PAUL DUGGAN</b></p> <p>2   proprietary formulations covered by a patent gave</p> <p>3   LK/Forza potentially exclusive position in this</p> <p>4   space."</p> <p>5                   <b>What forms the basis for that</b></p> <p>6 <b>opinion?</b></p> <p>7      A.   Well, a patent is meant to provide</p> <p>8   exclusivity and keep other people out of the market.</p> <p>9   That's the nature of a patent. So that's -- one</p> <p>10   would infer that if I have a successful formulation</p> <p>11   and it's patented, then people can't copy it.</p> <p>12      <b>Q.   Do you know if these products were ever</b></p> <p>13 <b>patented?</b></p> <p>14      A.   I do not.</p> <p>15      <b>Q.   Do you know the status of the patent for</b></p> <p>16 <b>the products?</b></p> <p>17      A.   I do not.</p> <p>18      <b>Q.   Are you aware if they were issued?</b></p> <p>19      A.   I do not.</p> <p>20      <b>Q.   Did you review the patent applications</b></p> <p>21 <b>filed by LK/Forza in connection with the products at</b></p> <p>22 <b>issue?</b></p> <p>23      A.   No.</p> <p>24      <b>Q.   Do you know if the United States Patent</b></p> <p>25 <b>and Trademark Office had offered any opinion as to</b></p>
<p style="text-align: right;">127</p> <p>1                   <b>DEPOSITION OF PAUL DUGGAN</b></p> <p>2   years and there's nothing typical.</p> <p>3       <b>Q.   You don't account for your time when</b></p> <p>4 <b>charging the client?</b></p> <p>5       A.   I don't know what the invoice looks</p> <p>6   like, that's what you asked me. I don't know what</p> <p>7   it looks like. It might just say eight hours times</p> <p>8   \$500, 4,000, services provided. It might. I don't</p> <p>9   know.</p> <p>10      <b>Q.   What's your basis for your fifth opinion</b></p> <p>11 <b>that states, "Mrs. Scheid and Mr. Kemp will help" --</b></p> <p>12 <b>"with help from Mrs. Scheid's mother, a physician</b></p> <p>13 <b>specializing in children's health, formulated a</b></p> <p>14 <b>proprietary line of supplements for amateur</b></p> <p>15 <b>wrestlers and even sought patent protection for its</b></p> <p>16 <b>formulas."</b></p> <p>17      A.   Conversations with counsel for LK and</p> <p>18   with Mr. Kemp.</p> <p>19      <b>Q.   So conversations that you had with</b></p> <p>20 <b>counsel helped form the basis of some of the</b></p> <p>21 <b>opinions that you have in your report?</b></p> <p>22      A.   No. Counsel was with Mr. Kemp. So when</p> <p>23   I'm saying conversations, I'm speaking with Lee Kemp</p> <p>24   and counsel was there.</p> <p>25      <b>Q.   And you state that "The fact of</b></p>	<p style="text-align: right;">129</p> <p>1                   <b>DEPOSITION OF PAUL DUGGAN</b></p> <p>2   the patentability of the products in the</p> <p>3   application?</p> <p>4      A.   No.</p> <p>5      <b>Q.   Without an issued patent, how could have</b></p> <p>6 <b>Forza prevented an established sports nutrition</b></p> <p>7 <b>company from selling an identical or near identical</b></p> <p>8 <b>product?</b></p> <p>9      A.   That's a legal question.</p> <p>10      <b>Q.   It goes to your opinion that they had an</b></p> <p>11 <b>exclusive space, potentially exclusive position in</b></p> <p>12 <b>this space.</b></p> <p>13      A.   From a business standpoint, your patent</p> <p>14   lawyer would inform the potential infringer that we</p> <p>15   have a patent pending so they may or may not elect</p> <p>16   to continue to sell the product. That's a business</p> <p>17   or a legal business decision that Kemp, Forza and</p> <p>18   counsel would make.</p> <p>19      <b>Q.   What forms your basis that Ms. Scheid</b></p> <p>20 <b>helped to form -- formulate the products?</b></p> <p>21      A.   Conversations with Mr. Kemp.</p> <p>22      <b>Q.   Sorry, Ms. Scheid's mother.</b></p> <p>23                   <b>What forms your basis for the fact</b></p> <p>24 <b>or your opinion that Ms. Scheid's mother formulated</b></p> <p>25 <b>the products?</b></p>

<p style="text-align: right;">130</p> <p>1           <b>DEPOSITION OF PAUL DUGGAN</b></p> <p>2       A.   Same answer.</p> <p>3       <b>Q.   Did you review Ms. Scheid's mother's</b></p> <p>4 <b>deposition testimony in this case?</b></p> <p>5       A.   I did not.</p> <p>6       <b>Q.   In her deposition she stated that she</b></p> <p>7 <b>didn't have any part in the formulation of these</b></p> <p>8 <b>products.</b></p> <p>9           <b>Does that change your opinion?</b></p> <p>10       MR. SOLON: Object to foundation.</p> <p>11       BY MS. ALIKHAN:</p> <p>12       <b>Q.   Would that change your opinion?</b></p> <p>13       A.   No. That Scheid and Kemp formulated a</p> <p>14 supplement.</p> <p>15       <b>Q.   With help from Ms. Scheid's mother, a</b></p> <p>16 <b>physician specializing in children's health.</b></p> <p>17       A.   No.</p> <p>18       <b>Q.   Did you review any statistics on the</b></p> <p>19 <b>allowance on rate of patent applications relating to</b></p> <p>20 <b>dietary supplements or sports nutrition products?</b></p> <p>21       A.   No.</p> <p>22       <b>Q.   Did you ask if any patentability</b></p> <p>23 <b>opinions existed with respect to these patent</b></p> <p>24 <b>applications?</b></p> <p>25       A.   No.</p>	<p style="text-align: right;">132</p> <p>1           <b>DEPOSITION OF PAUL DUGGAN</b></p> <p>2 <b>couldn't sell to Forza's intended customers, right?</b></p> <p>3       A.   Ripley was not assuming that they</p> <p>4 controlled the market a hundred percent. He was</p> <p>5 assuming they would get a piece of it. It's a very</p> <p>6 large market and they're looking at getting two,</p> <p>7 then five then 10 million a year in sales, not the</p> <p>8 entire market.</p> <p>9       <b>Q.   So other companies could sell products</b></p> <p>10 <b>to Forza's intended customers, correct?</b></p> <p>11       A.   Correct. And that's considered and</p> <p>12 calculated into the Ripley report.</p> <p>13       <b>Q.   We'll get to that report in a second.</b></p> <p>14           <b>Did you see the USAW contract that</b></p> <p>15 <b>Forza entered into?</b></p> <p>16       A.   No.</p> <p>17       <b>Q.   Did you review it?</b></p> <p>18       A.   No.</p> <p>19       <b>Q.   Do you have an understanding of the</b></p> <p>20 <b>terms that are contained in it?</b></p> <p>21       A.   No.</p> <p>22       <b>Q.   So you got that information strictly</b></p> <p>23 <b>from Mr. Ripley, correct?</b></p> <p>24       A.   Correct.</p> <p>25       <b>Q.   Do you know whether or not he reviewed</b></p>
<p style="text-align: right;">131</p> <p>1           <b>DEPOSITION OF PAUL DUGGAN</b></p> <p>2       <b>Q.   So you don't know whether or not these</b></p> <p>3 <b>patents could have been issued at any point?</b></p> <p>4       A.   Could have been?</p> <p>5       <b>Q.   Yes.</b></p> <p>6       A.   At the time the business was started,</p> <p>7 they were potentially able to be issued, period.</p> <p>8       <b>Q.   Did you examine whether there were any</b></p> <p>9 <b>other sports nutritional products targeted to</b></p> <p>10 <b>amateur wrestlers?</b></p> <p>11       A.   No.</p> <p>12       <b>Q.   In your sixth opinion you state that</b></p> <p>13 <b>"LK/Forza had the endorsement of USA Wrestling as</b></p> <p>14 <b>the only authorized source for approved nutritional</b></p> <p>15 <b>supplements for wrestlers."</b></p> <p>16           <b>What do you base that opinion on?</b></p> <p>17       A.   Ripley deposition.</p> <p>18       <b>Q.   What page?</b></p> <p>19       A.   You'd have to give me the deposition.</p> <p>20       <b>Q.   You don't know sitting here today?</b></p> <p>21       A.   I don't have a perfect memory -- I've</p> <p>22 got a Ripley document that I have, it was about four</p> <p>23 inches. So I don't have total recall.</p> <p>24       <b>Q.   Assuming that statement is true, that</b></p> <p>25 <b>doesn't mean that other sports nutritional companies</b></p>	<p style="text-align: right;">133</p> <p>1           <b>DEPOSITION OF PAUL DUGGAN</b></p> <p>2 <b>the contract?</b></p> <p>3       A.   I do not.</p> <p>4       <b>Q.   Do you know whether or not he had any</b></p> <p>5 <b>understanding of the agreement between Forza and</b></p> <p>6 <b>USAW?</b></p> <p>7       A.   No.</p> <p>8       <b>Q.   You state that "No other company had the</b></p> <p>9 <b>endorsement or access" -- pardon me. "No other</b></p> <p>10 <b>company had that endorsement" of the USAW.</b></p> <p>11           <b>How do you know that?</b></p> <p>12       A.   Ripley report.</p> <p>13       <b>Q.   You also stated that "USA Wrestling</b></p> <p>14 <b>permitted Forza/LK to use its extensive database."</b></p> <p>15           <b>What do you base that on?</b></p> <p>16       A.   I am not sure if that's from Ripley or</p> <p>17 Kemp.</p> <p>18       <b>Q.   The conversations with Mr. Kemp?</b></p> <p>19       A.   Right. Or the Ripley report. I would</p> <p>20 have to reread Ripley.</p> <p>21       <b>Q.   Before we take a break, you stated that</b></p> <p>22 <b>Mr. Kemp's marketing power was a draw for the</b></p> <p>23 <b>success of Forza, correct?</b></p> <p>24       A.   Yes.</p> <p>25       <b>Q.   And in your report here you liken him to</b></p>

134

1                   **DEPOSITION OF PAUL DUGGAN**  
2   **Michael Jordan as the Michael Jordan of amateur**  
3   **wrestling, right?**  
4       A.   Yes.  
5       **Q.   What's your basis for that?**  
6       A.   It's an analogy. Michael Jordan was, if  
7   you looked at greatest basketball players, he'd be  
8   listed as top 10. If you looked at greatest  
9   wrestlers Lee Kemp's listed in the top 10.  
10      **Q.   Would Michael Jordan be listed as top**  
11      **three?**  
12      A.   He might be listed as top 10. It  
13   depends on your era, the greatest player. Could  
14   have been Oscar Robinson, or Wilt Chamberlain who  
15   scored up to 100 points a game. Jordan didn't break  
16   Chamberlain's records. They still stand. So it's a  
17   question of analyzing the eras they played in.  
18            But in the -- Jordan clearly and  
19   Wilt Chamberlain would each be included in top 10  
20   like Lee Kemp along with others are included in top  
21   10 in wrestling.  
22      **Q.   What do you base that information on?**  
23      A.   As I answered before, I Googled greatest  
24   wrestlers and it includes Lee Kemp, John Smith, Cael  
25   Sanderson and others.

135

1                   **DEPOSITION OF PAUL DUGGAN**  
2       **Q.   What websites did you get that**  
3       **information from?**  
4       A.   You already asked me that and I answered  
5   I don't recall.  
6       **Q.   Did you list those websites on your**  
7       **Exhibit B of your report?**  
8       A.   No.  
9       **Q.   So sitting her today, you can't tell me**  
10      **specifically where that information came from.**  
11      A.   Google.  
12      **Q.   Where on Google? Google is a big space.**  
13      A.   I could probably pull it up at the break  
14   if you'd like to see it. I'd be happy to do it.  
15      **Q.   What's the basis of your statement if**  
16      **Michael Jordan sold "supplements to amateur**  
17      **basketball players, one could forecast a better than**  
18      **average probability of success"?**  
19      A.   It's my opinion name recognition, Jordan  
20   to basketball players is like Kemp to wrestling.  
21      **Q.   What research did you do to determine**  
22      **that Jordan to basketball players is like Kemp to**  
23      **wrestling?**  
24      A.   What research did I do?  
25      **Q.   Yes.**

136

1                   **DEPOSITION OF PAUL DUGGAN**  
2       A.   I draw the inference from being an  
3   amateur basketball and wrestling enthusiast.  
4       **Q.   Because you're a fan you're able to draw**  
5       **that inference?**  
6       A.   As to the Kemp side of things, I draw it  
7   off the web in terms of all the ratings and systems.  
8       **Q.   When you talk about ratings and systems,**  
9       **can you explain to me what that is, what that means?**  
10      A.   Well, one way they rate wrestlers is on  
11   a point system. You get X number of points for  
12   being in the Olympics, X number of points for  
13   winning a silver or bronze or gold medal; X number  
14   of points for participating in international  
15   tournaments, for winning them; for competing at the  
16   NCAA, the collegiate.  
17            Cael Sanderson, who comes at the  
18   top of some lists, and Cael is C-a-e-l. He comes to  
19   the top of some lists, never lost a match in high  
20   school or college. And yet some people don't  
21   recognize him as the all-time wrestler although he  
22   never lost a match because he doesn't have the  
23   international points.  
24            So there are different point  
25   systems that would come up with different answers.

137

1                   **DEPOSITION OF PAUL DUGGAN**  
2   Some consider John Smith, and I don't disagree, is  
3   the greatest. I think that's who Lee Kemp would  
4   consider, John Smith is the greatest.  
5       **Q.   Do any of these resources rank Mr. Kemp**  
6       **as the greatest?**  
7       A.   No. I would put him top five. Of his  
8   era, I would say he came after Gable, beat Gable,  
9   came before Cael Sanderson and before John Smith.  
10      **Q.   What about Pat Smith?**  
11      A.   Pat Smith?  
12      **Q.   Have you heard of him?**  
13      A.   No.  
14      **Q.   So do you have any knowledge as to**  
15      **whether or not Mr. Kemp has won any gold medals in**  
16      **the Olympics?**  
17      A.   His Olympic eligibility year, the U.S.  
18   did not participate because of the Jimmy Carter  
19   boycott.  
20      **Q.   So he did not participate in the**  
21      **Olympics?**  
22      A.   Right, which knocks him down because he  
23   didn't get points for having an Olympic gold medal  
24   even though he didn't get the chance.  
25      **Q.   Have you done any research with respect**

138

1                   DEPOSITION OF PAUL DUGGAN  
2   to athlete endorsements of products?  
3       A.   No.  
4       Q.   Have you done any research with respect  
5   to the wrestling consumers?  
6       A.   No.  
7       Q.   In Paragraph 17 of your report, you  
8   compare Nike and Michael Jordan to Fitness Arts and  
9   the LK/Forza brand.  
10       What research did you do to  
11   determine the success of Michael Jordan with Nike?  
12       A.   In the news last week they listed  
13   Michael Jordan as the highest paid athlete in the  
14   world last year based on a combination of salary and  
15   endorsements. So that's only a recent anecdote, but  
16   the Michael Jordan association to Nike in creating  
17   the Air Jordan brand has been legendary and has put  
18   Jordan as the highest paid athlete in sports in  
19   calendar 2014.  
20       Q.   So one of the bases is based on a news  
21   report from last week?  
22       A.   No. It only confirms my --  
23       Q.   Your speculation?  
24       A.   Not my speculation. The success of Nike  
25   and its association with Tiger Woods and Michael

139

1                   DEPOSITION OF PAUL DUGGAN  
2   Jordan.  
3       Q.   Based on what research?  
4       A.   Over time I've owned the Nike stock,  
5   analyzed their sales, their sales growth. It has  
6   been a very powerful stock in the market. From time  
7   to time I invest with Jackson in consumer brands so  
8   I'm aware of it on a sometimes casual and sometimes  
9   very intense basis, depending on where my  
10   investments are made.  
11       Q.   What were Nike's sales prior to its  
12   enlisting of Michael Jordan?  
13       A.   I don't have that information.  
14       Q.   What were their sales after?  
15       A.   Higher.  
16       Q.   Based on what?  
17       A.   Reality.  
18       Q.   Do you have any knowledge of Michael  
19   Jordan endorsing products directed to young people  
20   today?  
21       A.   Air Jordan brand, he's the No. 1 paid  
22   celebrity today, 20 years after he stopped playing.  
23       Q.   Anything else?  
24       A.   He used to do Gatorade, but I don't know  
25   if he still does. I don't think he does anymore.

140

1                   DEPOSITION OF PAUL DUGGAN  
2       Q.   Are Air Jordans targeted to particular  
3   athletes?  
4       A.   Basketball players.  
5       Q.   Are those the only consumer that buys  
6   Air Jordan.  
7       A.   Sometimes they're more of a social brand  
8   where people want to have the Air Jordan, but Nike  
9   has its own logo with the swoosh and Air Jordan is  
10   an extension of that.  
11       Q.   Was LK Nutrition targeted to any type of  
12   consumer?  
13       A.   Was it?  
14       Q.   Yes. Did it have a targeted market?  
15       A.   Wrestling community: Local club, grade  
16   school, high school, college.  
17       Q.   In 8, the basis for your opinion located  
18   in your report is that "LK/Forza secured sufficient  
19   funding to purchase the initial round of proprietary  
20   products from PRL," right? And you state that it  
21   was enough to generate twice the --  
22       A.   That's not what 18 says.  
23       Q.   8.  
24       A.   8. I thought you said 18.  
25               Are you saying Page 8 or Paragraph

141

1                   DEPOSITION OF PAUL DUGGAN  
2   8? What are saying here?  
3       Q.   I'm on Page 7.  
4       A.   I can't understand you.  
5       Q.   Page 7.  
6       MR. BROWN: Item 8.  
7       THE WITNESS: Item 8. Okay. I thought  
8   she said 18.  
9       MR. BROWN: Halfway down.  
10   BY MS. ALIKHAN:  
11       Q.   Here you state that "LK had secured  
12   sufficient funding to purchase the initial round of  
13   proprietary products from PRL." And you say, it was  
14   "enough to generate twice the amount in cash to then  
15   purchase second and third full cycles of products."  
16               How do you form the basis or what  
17   basis do you rely upon for that opinion?  
18       A.   If you -- I believe that they had  
19   550,000 in cash in the form of a loan. They spent  
20   \$365,000 in goods. If you turn the goods over with  
21   the similar product margin you would have 550 to  
22   \$600,000 in sales. You repeat the process, repeat  
23   the process, repeat the process.  
24               So there was enough money to turn  
25   the inventory over, they had enough money to make

<p style="text-align: right;">142</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 the purchase of the product.</p> <p>3 <b>Q. This came from Mr. Ripley's business</b></p> <p>4 <b>plan, right?</b></p> <p>5 A. The funding came from -- the turnover</p> <p>6 comes from Mr. Ripley's business plan, the physical</p> <p>7 funding came from the information received either</p> <p>8 through -- I state in here. Let me see, I state in</p> <p>9 here --</p> <p>10 <b>Q. I'm just talking about the numbers where</b></p> <p>11 <b>you say they were funded adequately, enough to</b></p> <p>12 <b>generate twice the amount of cash.</b></p> <p>13 <b>Where does that assumption come</b></p> <p>14 <b>from?</b></p> <p>15 A. They have \$550,000 to purchase \$365,000</p> <p>16 worth of product. Okay? Clearly they had enough</p> <p>17 money. Once that product sold and resold and</p> <p>18 resold. Once you sell it, you get the cash back.</p> <p>19 You sell it again, you get the cash back.</p> <p>20 <b>Q. How much do you have to sell it for?</b></p> <p>21 <b>What kind of profit margins do you have to make to</b></p> <p>22 <b>generate twice the amount of cash?</b></p> <p>23 A. At two turns a year you would only have</p> <p>24 to turn it two turns to generate that.</p> <p>25 <b>Q. To who?</b></p>	<p style="text-align: right;">144</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 A. There is 165 in excess cash to fund the</p> <p>3 start-up, to fund the spinoff of LK. So there's</p> <p>4 plenty of money. This is funded. The key in a new</p> <p>5 business is even get a foothold. They've got the</p> <p>6 money for an Olympic year for a distribution of</p> <p>7 product.</p> <p>8 <b>Q. What is your basis for that, just simple</b></p> <p>9 <b>numbers? How do you come to that conclusion?</b></p> <p>10 A. Well, if -- it's math. It's simple</p> <p>11 numbers. What's a bigger number, counselor, 550,000</p> <p>12 or 365,000?</p> <p>13 <b>Q. I don't know. I am the one asking you</b></p> <p>14 <b>questions.</b></p> <p>15 A. Okay. So do you understand math?</p> <p>16 What's a bigger number? 550,000 is bigger than 365.</p> <p>17 There's enough money to do it.</p> <p>18 <b>Q. Did you see an operational plan?</b></p> <p>19 A. It's in Mr. Ripley's.</p> <p>20 <b>Q. Did you know whether or not it was</b></p> <p>21 <b>feasible to make those numbers?</b></p> <p>22 A. Mr. Ripley considers it feasible with</p> <p>23 his analysis.</p> <p>24 <b>Q. Do you?</b></p> <p>25 A. I am relying on Mr. Ripley. My opinion</p>
<p style="text-align: right;">143</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 A. Right now they're selling product with a</p> <p>3 30 to 40 percent margin. I think on average, 35</p> <p>4 percent.</p> <p>5 <b>Q. I'm talking about the basis for this</b></p> <p>6 <b>statement on Page 7, Section 8, Item 8.</b></p> <p>7 A. Your question again is?</p> <p>8 <b>Q. What is your basis that LK had secured</b></p> <p>9 <b>sufficient funding to purchase the initial round and</b></p> <p>10 <b>generate twice the amount of cash?</b></p> <p>11 A. I think I've answered that. What don't</p> <p>12 you understand?</p> <p>13 <b>Q. I don't understand your answer. Go</b></p> <p>14 <b>ahead and answer it again.</b></p> <p>15 A. They had \$550,000 in a loan to secure a</p> <p>16 \$365,000 purchase from the supplier, from Premier.</p> <p>17 So that gives them a \$165,000 cushion. But once</p> <p>18 that 365,000 is sold for over 500,000 in sales, the</p> <p>19 500,000 is reinvested and would generate 700. The</p> <p>20 700 is reinvested and would generate a million. So</p> <p>21 it might have three or four or five X. That two X</p> <p>22 is very conservative.</p> <p>23 <b>Q. Did this take into account any of the</b></p> <p>24 <b>expenses that LK would have to incur? Can you</b></p> <p>25 <b>remember?</b></p>	<p style="text-align: right;">145</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 here is there is significant cash.</p> <p>3 <b>Q. Based on Mr. Ripley's --</b></p> <p>4 A. No. Simple math. 550,000 will clearly</p> <p>5 buy 365,000 worth of merchandise unless it's</p> <p>6 tainted.</p> <p>7 <b>Q. And what is your basis that \$165,000 was</b></p> <p>8 <b>sufficient to cover any expenses that Forza would</b></p> <p>9 <b>have incurred? Is that simple math?</b></p> <p>10 A. Yes, it is very simple. Is that your</p> <p>11 question, is it simple math? Yes, it's simple.</p> <p>12 <b>Q. What is your basis?</b></p> <p>13 A. If you take a look at Fitness Arts,</p> <p>14 their cost of -- their expenses are 140,000 a year</p> <p>15 for 700 million in sales, irrespective of salaries.</p> <p>16 <b>Q. Did Mr. Ripley compare Fitness Arts'</b></p> <p>17 <b>financials in coming up with Forza's?</b></p> <p>18 A. He built a business model and --</p> <p>19 <b>Q. Did he rely upon Fitness Arts' numbers?</b></p> <p>20 A. I don't recall.</p> <p>21 <b>Q. I'll mark this as Exhibit 8.</b></p> <p>22 <b>(Whereupon, Duggan Exhibit 8</b></p> <p>23 <b>marked as requested.)</b></p> <p>24 <b>(Whereupon, the document was</b></p> <p>25 <b>tendered.)</b></p>

37 (Pages 142 to 145)

146

1                   **DEPOSITION OF PAUL DUGGAN**  
2 BY MS. ALIKHAN:  
3       **Q. This is a business plan that Mr. Ripley**  
4 **created for Forza, right?**  
5       A. Is this -- it is one. Is this his final  
6 one?  
7       **Q. Do you know when he -- what date he**  
8 **created the final version?**  
9       A. I'd have to -- you would have to show me  
10 his deposition.  
11       **Q. His deposition states that this was the**  
12 **final business plan.**  
13           MR. SOLON: Object to foundation.  
14 BY THE WITNESS:  
15       A. Your question is?  
16 BY MS. ALIKHAN:  
17       **Q. Is this the business plan that**  
18 **Mr. Ripley created for Forza?**  
19       A. You're telling me it is. I don't know.  
20       **Q. I'm asking you, is it?**  
21       A. You're telling me it is. I don't know.  
22       **Q. I said is this the business plan?**  
23       A. I would have to refer to -- I don't have  
24 a document here. I didn't bring a document. I  
25 don't know if this was his final plan. There were

147

1                   **DEPOSITION OF PAUL DUGGAN**  
2 interim drafts.  
3       **Q. In Paragraph 18 of your report, you**  
4 **state, "I think the single most important issue is**  
5 **that LK/Forza was funded. They had \$550,000 in**  
6 **funding on hand. This was not a pipe dream."**  
7           I want to turn your attention to  
8 **Page 15 of the exhibit I just provided you. Sales**  
9 **obviously played a factor in your opinion that Forza**  
10 **was adequately funded, right?**  
11       A. What played a factor?  
12       **Q. Sales.**  
13       A. Sales?  
14       **Q. Sales.**  
15       A. I stated that \$550,000 was enough to  
16 fund the opening purchase of inventory and get the  
17 company started.  
18       **Q. Well, that assumes there would have to**  
19 **be sales of the product, right?**  
20       A. No question.  
21       **Q. And this is a part of the business model**  
22 **that deals with the sales forecast, right?**  
23       A. Page 15? The sales forecast is the  
24 whole business plan here but this is a component,  
25 yes.

148

1                   **DEPOSITION OF PAUL DUGGAN**  
2       **Q. Section 5.43, your sales forecast?**  
3       A. Yes.  
4       **Q. And according to Mr. Ripley, in Year 1,**  
5 **there would be almost \$4 million in sales of the**  
6 **product, right?**  
7       A. Yes.  
8       **Q. And that's assuming that 3.1 million of**  
9 **that was sold to wrestling clubs, right?**  
10       A. Yes.  
11       **Q. And 525,000 of that was sold to high**  
12 **school wrestling programs?**  
13       A. Yes.  
14       **Q. And \$250,000 of that was sold at**  
15 **wrestling events?**  
16       A. Yes.  
17       **Q. Online sales of \$50,000, right?**  
18       A. Yes.  
19       **Q. Did you see any evidence that Forza had**  
20 **attended events or had approached 300 clubs to make**  
21 **that 3.15 million goal sales forecast?**  
22       A. No.  
23       **Q. Did you see any evidence that Forza**  
24 **approached 35 wrestling programs to make that**  
25 **\$525,000 forecast?**

149

1                   **DEPOSITION OF PAUL DUGGAN**  
2       A. I didn't see any of that evidence, no.  
3 And they might have approached 500 wrestling  
4 programs to get 35.  
5       **Q. Did you see that evidence?**  
6       A. I did not.  
7       **Q. Did you see any evidence that Forza**  
8 **attended 50 wrestling events to make that \$250,000?**  
9       A. They didn't because they didn't receive  
10 the product. And when they got it, it was tainted.  
11 Why would you go sell a tainted product mislabeled  
12 by a manufacturer? You can't do it. It was  
13 destroyed by PR. I can't help that. Of course  
14 you're not going to sell bad products to kids and  
15 ruin their careers.  
16       **Q. What's your basis that the product would**  
17 **ruin these kids' careers?**  
18       A. Well, if they take a tainted product and  
19 it shows up in the --  
20       **Q. What's your basis --**  
21       A. -- DHEA --  
22       **Q. What's your basis that it was tainted?**  
23       A. I'm probably told that by Mr. Kemp,  
24 that's why they couldn't sell it.  
25       **Q. That's why they couldn't sell it?**



150

1                   **DEPOSITION OF PAUL DUGGAN**  
2       A.   It's tainted. It's been ruined. It's  
3       cited in here in the depositions. I am not a  
4       tainted expert, tainted product expert. Are you  
5       denying the product was tainted with DHEA?  
6       **Q.   I'm not making any claims. This is what**  
7       **you're saying. You're saying they couldn't sell the**  
8       **product to wrestling clubs and high school programs**  
9       **and wrestling events because it was tainted.**  
10      A.   And it was never delivered. It was  
11      ordered and paid for in November and they didn't get  
12      it for a year. How are you going to sell something  
13      you don't have? And then when you get it, it's  
14      mislabeled and tainted. You can't sell something  
15      that doesn't exist.  
16      **Q.   What's your basis for the fact they**  
17      **couldn't sell it because they got it quote, unquote,**  
18      **late?**  
19      A.   You know what? That's the most  
20      commonsense in the whole world. If you don't have  
21      it you can't sell it.  
22      **Q.   So when you have it, why can't you sell**  
23      **it?**  
24      A.   Because when it was received it was  
25      mislabeled and tainted.

151

1                   **DEPOSITION OF PAUL DUGGAN**  
2       **Q.   What's your basis for the fact that they**  
3       **couldn't sell it because it was mislabeled and**  
4       **tainted?**  
5       A.   That's not part of my opinion.  
6       **Q.   But you just testified to that. You**  
7       **said they couldn't sell the product because it was**  
8       **mislabeled and tainted and it wasn't delivered on**  
9       **time.**  
10      A.   You can't sell something you don't have.  
11      You're not going to -- if you're going to have a  
12      reputation, you're not going to try to ruin careers  
13      by selling them tainted products so they're banned  
14      from wrestling. That's just commonsense. You can't  
15      sell garbage. You can't sell things that are  
16      mislabeled. They have their money ripped off.  
17      MR. SOLON: May I suggest that you don't  
18      argue the merits underlying the case.  
19      MS. ALIKHAN: I'm not arguing the  
20      merits. He's the one that brought it up.  
21      BY THE WITNESS:  
22      A.   No, no, no. I said at Paragraph 18 I  
23      said they're funded.  
24      BY MS. ALIKHAN:  
25      **Q.   And I'm taking you through the business**

152

1                   **DEPOSITION OF PAUL DUGGAN**  
2       **plan to test that assumption.**  
3       A.   That's Mr. Ripley's business plan.  
4       **Q.   Yeah. That you relied upon in forming**  
5       **your opinions, right?**  
6       MR. SOLON: Hang on. Let me object.  
7       Don't argue with the witness. Slow down. Let's get  
8       a question and answer, get back on track.  
9       BY MS. ALIKHAN:  
10      **Q.   Mr. Duggan, you relied upon Mr. Ripley's**  
11      **business plan in determining whether or not Forza**  
12      **incurred damages in this case, didn't you?**  
13      A.   My report lists damages.  
14      **Q.   Did you rely on the business plan --**  
15      A.   Can I answer the question?  
16      **Q.   I'm not asking about your report. I'm**  
17      **asking about whether or not you relied on**  
18      **Mr. Ripley's business plan in determining the**  
19      **damages that Forza incurred.**  
20      A.   My report does not speak to that. My  
21      report lists direct losses of \$2,759,000 not related  
22      to the lost business expansion that Mr. Ripley  
23      calculated, not me. So if you go to -- if you add  
24      damages up, you have the Ripley damage in my report.  
25      **Q.   Part of your report has to do with lost**

153

1                   **DEPOSITION OF PAUL DUGGAN**  
2       **profits, doesn't it?**  
3       A.   My report deals with actual expenses  
4       lost, the purchase of tainted product from PRL and  
5       the development cost. It's not a lost profits  
6       calculation, that's Mr. Ripley's report.  
7       **Q.   In Section 20 of your report you state,**  
8       **"I have reviewed the business plan prepared by**  
9       **Michael Ripley. Mr. Ripley is a certified public**  
10      **accountant. His business plan is thorough and**  
11      **complete and predicts a very conservative market**  
12      **penetration. Mr. Ripley forecast of \$47 million in**  
13      **sales and \$11.3 million in profits for the three-**  
14      **year period from 2012 and 2014. In my opinion,**  
15      **profits of at least 10 million from the LK/Forza**  
16      **business were both reasonable and achievable."**  
17      **Did you rely upon Mr. Ripley's**  
18      **report or business plan in making that -- in forming**  
19      **that opinion?**  
20      A.   The \$10 million was less than the Ripley  
21      plan; I reduced it, yes. So I took the Ripley plan,  
22      he did the work, and I said even with a range of  
23      error it would be \$10 million.  
24      **Q.   Did you do anything to test the**  
25      **assumptions within Mr. Ripley's business plan?**

## DEPOSITION OF PAUL DUGGAN

1  
2 A. When I read the plan I thought they were  
3 reasonable.

4 **Q. Based on what?**

5 A. Based on my knowledge, skills, training,  
6 experience, working with businesses. It seemed to  
7 be a comprehensive, well-thought out, well-prepared  
8 report.

9 **Q. Did you do anything to test whether or**  
10 **not Forza would have been able to sell \$3.1 million**  
11 **to 300 wrestling clubs?**

12 A. I did not.

13 **Q. Did you do anything to test whether or**  
14 **not Forza would have been capable of selling**  
15 **\$525,000 to 35 wrestling programs in Year 1?**

16 A. I think I've answered this already.

17 **Q. Did you?**

18 A. Yes, I think so. I think I've answered  
19 it more than once. I didn't test this.

20 **Q. So what forms your basis that this was a**  
21 **thorough and well and complete -- very conservative**  
22 **market penetration -- which predicts a very**  
23 **conservative market penetration?**

24 A. That's what Mr. Ripley's job is, not  
25 mine. He did it. He was paid to do it. He spent

## DEPOSITION OF PAUL DUGGAN

1 an extensive amount of time studying the market. So  
2 I took his number and reduced it by a margin of  
3 error and inserted it at Line 20. I didn't do this  
4 business plan, he did. He's the subject of the  
5 deposition, not me.

6 **Q. Where did you see he did a thorough and**  
7 **complete examination of the market?**

8 A. I thought he did a reasonable -- I  
9 thought the data he's relying on was reasonable, I  
10 thought it was a reasonable approach. I've seen a  
11 lot of business plans. That was his opinion. When  
12 I looked at it, it was done in a normal, reasonable  
13 method and way.

14 **Q. Did you see in Mr. Ripley's deposition**  
15 **that did he not do any research with respect to**  
16 **these numbers? This all came from Lee and Mia?**

17 A. I don't recall.

18 **Q. Would that affect your opinion on -- as**  
19 **to whether or not this was a thorough and complete**  
20 **business plan?**

21 A. No.

22 **Q. Why not?**

23 A. Because if someone would be aware of the  
24 market, it would be Lee. Lee's in the market. So  
25

## DEPOSITION OF PAUL DUGGAN

1 you would take that -- you have to start with some  
2 baseline points and you have an idea of pricing and  
3 you do the calculations and the forecasting.

4 **Q. And would these numbers just come out of**  
5 **thin air or would you have to do some sort of**  
6 **research to determine whether or not these numbers**  
7 **were feasible?**

8 A. Mr. Ripley did it, I didn't.

9 **Q. And you read in Mr. Ripley's deposition**  
10 **that he did do that?**

11 A. I didn't say that. He's done a  
12 reasonable amount of work here. He's got a  
13 reasonable basis for an opinion, a market exists and  
14 its funded.

15 **Q. I just want to confirm that you did read**  
16 **Mr. Ripley's deposition, correct?**

17 A. I've seen it. Yes, I read it. The file  
18 I was given is about that thick and a lot of  
19 schedules on Ripley.

20 **Q. During the time of this -- of Forza's**  
21 **launch in 2011, the U.S. was in a recession,**  
22 **correct?**

23 A. Would you define "recession"?

24 **Q. Well, hasn't it been called the time**  
25

## DEPOSITION OF PAUL DUGGAN

1 **period of the great recession? Have you ever heard**  
2 **that?**

3 A. That was 1928 to 1936.

4 **Q. The great recession?**

5 A. You're asking me? That was the great  
6 recession. The market crashed October 29, 1929 and  
7 we were in a recession for the next 10 to 15 years,  
8 and it didn't pull out until Pearl Harbor.

9 **Q. That was referred to as the great**  
10 **recession, not the Great Depression?**

11 A. A depression is a recession. So if  
12 you're going to talk about historical issues, the  
13 stock market was October 29, 1929. That was the  
14 crash.

15 **Q. So then you're unfamiliar with the**  
16 **term -- of the term "great recession" used for the**  
17 **period 2011?**

18 A. That would not be -- in the business  
19 that I exist in, that's not a term that would be  
20 used, "the great recession."

21 **Q. Was the economy in a recession in 2011?**

22 MR. SOLON: Object to foundation.

23 BY THE WITNESS:

24 A. I would have to research the -- I think  
25

<p style="text-align: right;">158</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 I would have to research the timing. There's a</p> <p>3 concept of recessions and what triggers them and</p> <p>4 that's an economic model, and what I would say that</p> <p>5 based on unemployment, that it was -- the recession</p> <p>6 had ended in 2011.</p> <p>7 BY MS. ALIKHAN:</p> <p>8 <b>Q. What's your opinion of the economy in</b></p> <p>9 <b>2011?</b></p> <p>10 MR. SOLON: Objection. It calls for a</p> <p>11 narrative.</p> <p>12 BY MS. ALIKHAN:</p> <p>13 <b>Q. Go ahead and answer.</b></p> <p>14 MR. SOLON: It's vague.</p> <p>15 BY MS. ALIKHAN:</p> <p>16 <b>Q. What was the status of the economy in</b></p> <p>17 <b>2011?</b></p> <p>18 A. It was good.</p> <p>19 <b>Q. It was good.</b></p> <p>20 A. Stock market had doubled from the</p> <p>21 bottom, it bottomed in March of 2009. Employment</p> <p>22 was recovering, unemployment had dropped from double</p> <p>23 digit rates. Employment was getting better.</p> <p>24 Payroll is getting better. Interest rates were at</p> <p>25 zero, which aided businesses. Federal funds were at</p>	<p style="text-align: right;">160</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 <b>Q. You state that in 2012 and 2013 that</b></p> <p>3 <b>there were no direct competitors targeting amateur</b></p> <p>4 <b>wrestlers.</b></p> <p>5 <b>What's your basis for that</b></p> <p>6 <b>statement or that opinion?</b></p> <p>7 A. Conversations with Lee Kemp.</p> <p>8 <b>Q. When did these conversations take place?</b></p> <p>9 A. March and April of 2015.</p> <p>10 <b>Q. Where did they take place?</b></p> <p>11 A. On the phone and in the counsel's</p> <p>12 office.</p> <p>13 <b>Q. Did you do any research to independently</b></p> <p>14 <b>verify whether or not that was true?</b></p> <p>15 A. I did not.</p> <p>16 <b>Q. Have you heard of a company called</b></p> <p>17 <b>Advocare?</b></p> <p>18 A. No.</p> <p>19 <b>Q. Were you aware they were the company</b></p> <p>20 <b>that held the USAW exclusive contract before Forza</b></p> <p>21 <b>did?</b></p> <p>22 A. No.</p> <p>23 <b>Q. Would that affect your opinion, knowing</b></p> <p>24 <b>that Advocare was still in business and still</b></p> <p>25 <b>selling to wrestlers during this time?</b></p>
<p style="text-align: right;">159</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 zero. Market was thriving, stock market, which is</p> <p>3 an indication of the business market.</p> <p>4 <b>Q. So, Mr. Ripley forecasted that Forza</b></p> <p>5 <b>would make around \$47 million in sales, and in your</b></p> <p>6 <b>opinion, you said that the profits of at least \$10</b></p> <p>7 <b>million were both reasonable and achievable.</b></p> <p>8 <b>What caused you to reduce the</b></p> <p>9 <b>amount that Mr. Ripley projected?</b></p> <p>10 A. Just even giving credit for margin of</p> <p>11 error, if it got off slower than expected or if</p> <p>12 collections were slower, just trying to be</p> <p>13 conservative. But that's Mr. Ripley's number, not</p> <p>14 mine.</p> <p>15 <b>Q. But your number is at least \$10 million</b></p> <p>16 <b>in profits were both reasonable and achievable,</b></p> <p>17 <b>right?</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. And would Forza's -- the way Forza's</b></p> <p>20 <b>marketing of its product affect the profits that it</b></p> <p>21 <b>would make?</b></p> <p>22 A. Of course.</p> <p>23 <b>Q. Would Forza attending certain events</b></p> <p>24 <b>affect the profits that it makes?</b></p> <p>25 A. Possibly.</p>	<p style="text-align: right;">161</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 A. No.</p> <p>3 <b>Q. Why not?</b></p> <p>4 A. You're talking about very small --</p> <p>5 you're talking about gradually taking business away.</p> <p>6 You had the relationship with the Olympic Committee,</p> <p>7 it's a Olympic year. If you didn't have bad</p> <p>8 product, maybe the profits would have been a whole</p> <p>9 lot more than this. But they were talking about a</p> <p>10 gradual concentration increase, 35 wrestling</p> <p>11 programs. There's a hundred wrestling programs in</p> <p>12 the Chicagoland area, they're only talking about 35</p> <p>13 wrestling programs nationwide. So it's a very small</p> <p>14 percentage of a very large market.</p> <p>15 <b>Q. How do you know that selling to 35</b></p> <p>16 <b>programs was easy?</b></p> <p>17 A. What I'm saying is that there's tens of</p> <p>18 thousands of programs and so to think you'd only get</p> <p>19 35 programs isn't claiming that you would own the</p> <p>20 universe. You're taking a small segment of a</p> <p>21 business. You're not looking for -- it's not an</p> <p>22 outlandish claim.</p> <p>23 <b>Q. That's not what I'm asking. Based upon</b></p> <p>24 <b>what I just shared with you, your statement that</b></p> <p>25 <b>there were no direct competitors targeting amateur</b></p>

41 (Pages 158 to 161)

<p style="text-align: right;">166</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 there's 140,000 of non-payroll expenses on Exhibit</p> <p>3 4, and that would be for the course of a year when</p> <p>4 in fact product sales would more than -- product</p> <p>5 sales at gross margins in excess of 40 percent would</p> <p>6 more than cover the difference of cash needed if, in</p> <p>7 fact, there was any needed. Seems to me to be a</p> <p>8 reasonable budget.</p> <p>9 Q. Assuming that those sales were made,</p> <p>10 right?</p> <p>11 A. Right. Assuming they didn't get tainted</p> <p>12 product that was mislabeled, right.</p> <p>13 Q. There's no other reason they failed in</p> <p>14 selling product?</p> <p>15 A. Again, we keep on going at this, how do</p> <p>16 you sell something you don't have?</p> <p>17 Q. Well, when they did get it.</p> <p>18 A. They couldn't sell it.</p> <p>19 Q. Why?</p> <p>20 A. Because it was tainted and it was</p> <p>21 mislabeled.</p> <p>22 Q. I'm trying to understand your basis for</p> <p>23 that.</p> <p>24 A. The basis -- you're asking me for the</p> <p>25 basis for the lawsuit? I'm not here to --</p>	<p style="text-align: right;">168</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 as to how much Forza would have needed for expenses</p> <p>3 in Year 1?</p> <p>4 A. My understanding is 165,000 was</p> <p>5 sufficient. If the product was delivered on time in</p> <p>6 an Olympic year, it was sufficient.</p> <p>7 Q. I would like you to -- I would like to</p> <p>8 direct your attention to Duggan 8 which is the</p> <p>9 business plan. Specifically, Page 14.</p> <p>10 A. What am I looking at?</p> <p>11 Q. Are you on Page 14?</p> <p>12 A. Of what?</p> <p>13 Q. Duggan 8, Mr. Ripley's business plan.</p> <p>14 A. Oh, Duggan 8. Okay. Page 14?</p> <p>15 Q. Yes.</p> <p>16 A. Okay.</p> <p>17 Q. Under "Marketing and Promotion," the</p> <p>18 last sentence, "Year 1 costs for these consulting</p> <p>19 promotion efforts will be \$100,000."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. So that's \$100,000 of \$165,000.</p> <p>23 A. No, it's not.</p> <p>24 Q. I'll direct your attention to Page --</p> <p>25 A. Let me finish my answer. It's not.</p>
<p style="text-align: right;">167</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 somebody's going to testify if the product was</p> <p>3 labeled correctly or not. I'm not. That will be a</p> <p>4 fact in evidence or won't be in evidence before I</p> <p>5 testify. I'm told it was mislabeled. Why are we</p> <p>6 sitting here? It was mislabeled. It was tainted.</p> <p>7 Q. And there's no other reasons that Forza</p> <p>8 could not sell their product?</p> <p>9 A. Other than the fact that they didn't</p> <p>10 have any product? You can't sell things you don't</p> <p>11 have. They don't have the product. How do you sell</p> <p>12 something you don't have?</p> <p>13 Q. Do you understand they eventually did</p> <p>14 receive product?</p> <p>15 A. It was tainted and mislabeled. Yes.</p> <p>16 Q. You assume that for the basis of the</p> <p>17 opinions in your report, correct?</p> <p>18 A. I assumed what?</p> <p>19 Q. That they couldn't sell the product</p> <p>20 because it was tainted, as you say, and it was</p> <p>21 mislabeled, as you say.</p> <p>22 A. They actually did sell some product,</p> <p>23 which I report in here. \$20,000 in calendar year</p> <p>24 2012.</p> <p>25 Q. So do you have any -- an understanding</p>	<p style="text-align: right;">169</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 Q. That's not an expense?</p> <p>3 A. If you spend \$100,000, that would be</p> <p>4 \$8,500 per month. And if you started selling</p> <p>5 product in January, you'd have profits by March.</p> <p>6 Q. It was for Year 1 costs, wasn't it?</p> <p>7 A. But it's not spent up front and it's not</p> <p>8 accounted for out of the 165. What you want to do</p> <p>9 is take every expense and ignore the gross margin on</p> <p>10 the product and that's not how it works. So you</p> <p>11 can't pick that number out. It's meaningless.</p> <p>12 Q. I'll direct your attention to Page 19.</p> <p>13 There's administrative costs of \$125,000?</p> <p>14 A. You're asking or telling?</p> <p>15 Q. That says that there are --</p> <p>16 A. Is that a question?</p> <p>17 Q. -- \$125,000 of administrative costs,</p> <p>18 correct?</p> <p>19 A. That's what the line says, yes.</p> <p>20 Q. When Forza got the product, what did it</p> <p>21 do to meet its Year 1 goals?</p> <p>22 A. Well, the -- they already missed Year 1</p> <p>23 because the product came late and they missed the</p> <p>24 Olympics.</p> <p>25 Q. What did they do to meet their quarterly</p>

<p style="text-align: right;">174</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 which they have now listed here.</p> <p>3 BY MS. ALIKHAN:</p> <p>4 Q. Now your report you refer to Forza's</p> <p>5 direct losses on Page 9.</p> <p>6 A. Page 9 of my report now?</p> <p>7 Q. Of your report.</p> <p>8 A. Okay.</p> <p>9 Q. You state that "Forza suffered direct</p> <p>10 losses as a result following problems caused by PRL:</p> <p>11 PRL failed to timely supply product in December 2011</p> <p>12 for introduction to the 2012 Olympic year. Many of</p> <p>13 the PRL products that were supplied were mislabeled</p> <p>14 and thus were not salable. Some of the products</p> <p>15 were tainted with a banned substance, DHEA, which</p> <p>16 reflected poorly on LK/Forza's image and its source</p> <p>17 of supply making it virtually impossible for them to</p> <p>18 sell products to amateur athletes."</p> <p>19 What is the basis for your</p> <p>20 conclusion that those issues caused Forza direct</p> <p>21 losses?</p> <p>22 A. I footnote it as Gibson deposition.</p> <p>23 Q. What else?</p> <p>24 A. Other than what I say the footnote is?</p> <p>25 Q. Yes.</p>	<p style="text-align: right;">176</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 BY MS. ALIKHAN:</p> <p>3 Q. Go ahead and answer if you can.</p> <p>4 MR. SOLON: The question may well be</p> <p>5 relevant; it's not relevant for this witness given</p> <p>6 the scope of why he's here as expert.</p> <p>7 MS. ALIKHAN: It's a basis for which he</p> <p>8 calculates the damages.</p> <p>9 BY MS. ALIKHAN:</p> <p>10 Q. And so my question is, if the products'</p> <p>11 labeling could have been easily remedied, would that</p> <p>12 have any bearing on your opinion that the products</p> <p>13 were not salable?</p> <p>14 A. The products that existed were not</p> <p>15 salable. So when you talk about mitigation, they</p> <p>16 did mitigate, they sold some of this through their</p> <p>17 system and those sales are listed.</p> <p>18 But how do you -- if it's not</p> <p>19 salable, it's not salable. You would have to go</p> <p>20 back to the source, PRL, who gave them the tainted</p> <p>21 and mislabeled product. And I guess that's why</p> <p>22 we're here in litigation because the parties didn't</p> <p>23 agree.</p> <p>24 Q. Didn't the fact that they did sell</p> <p>25 products indicate that their products were salable?</p>
<p style="text-align: right;">175</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 A. There's e-mails between -- I think</p> <p>3 included in the depositions of Gibson and Weesner --</p> <p>4 Weesner is at the Iowa State. I think he's the</p> <p>5 assistant athletic trainer -- indicating if there's</p> <p>6 DHEA, it's dead money and stay away from it. And</p> <p>7 that's the correspondence between Gibson and</p> <p>8 Weesner. So the tainted product threw them out.</p> <p>9 Q. So your testimony is that Mr. Weesner</p> <p>10 and Ms. Gibson had e-mail correspondence with one</p> <p>11 another regarding the products provided by PRL to</p> <p>12 Forza?</p> <p>13 A. Yes.</p> <p>14 Q. What's your basis for the fact that the</p> <p>15 products were mislabeled and not salable? First,</p> <p>16 what does not salable mean?</p> <p>17 A. Well, Webster would probably say it's</p> <p>18 not capable of being sold.</p> <p>19 Q. Are you aware that -- of any remedy that</p> <p>20 could have been taken to fix the mislabeling?</p> <p>21 MR. SOLON: Well, object to the scope of</p> <p>22 his reason for being here.</p> <p>23 MS. ALIKHAN: It's mitigation.</p> <p>24 MR. SOLON: I'll object to the</p> <p>25 foundation for your question.</p>	<p style="text-align: right;">177</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 A. \$20,000 versus the business plan of</p> <p>3 three to five million? No. I would tell you it was</p> <p>4 a dismal failure. When you take \$550,000 and</p> <p>5 generate 20,000 in products, it's a disaster caused</p> <p>6 by the tainted products.</p> <p>7 Q. The business plan that you didn't</p> <p>8 create?</p> <p>9 A. Pardon me?</p> <p>10 Q. A business plan that you didn't create</p> <p>11 based upon the numbers you that never tested?</p> <p>12 MR. SOLON: Let me object to form. And</p> <p>13 please, just don't argue with the witness.</p> <p>14 MS. ALIKHAN: I'm not arguing.</p> <p>15 MR. SOLON: Yes, you are.</p> <p>16 BY THE WITNESS:</p> <p>17 A. Your question's ridiculous. They bought</p> <p>18 \$365,000 worth of product, they paid cash for it.</p> <p>19 It was tainted, it was mislabeled, it was not</p> <p>20 salable. They were able to sell \$20,000. So let's</p> <p>21 just talk until 10 o'clock at night. They sold</p> <p>22 20,000 because that's all they could sell because it</p> <p>23 wasn't the proper product.</p> <p>24 Why do you go like this?</p> <p>25 BY MS. ALIKHAN:</p>

<p style="text-align: right;">178</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 <b>Q. Because I'm confused as to what you're</b></p> <p>3 <b>basing that on. I ask you and you get upset.</b></p> <p>4 A. No. No. Because you ask the same</p> <p>5 question I get upset. They sold \$20,000, Miss.</p> <p>6 They sold 20,000, not 3 million. You can't sell</p> <p>7 something you don't have. It wasn't delivered.</p> <p>8 When they got it, it wasn't labeled, it was tainted.</p> <p>9 You can't sell something that doesn't exist.</p> <p>10 <b>Q. How do you know that 3 million was an</b></p> <p>11 <b>achievable number?</b></p> <p>12 A. That's Mr. Ripley's number. He's going</p> <p>13 to testify to his business plan. I don't think in</p> <p>14 light of the success at Fitness Arts and the -- and</p> <p>15 Mr. Kemp's name and stature and the fact that you</p> <p>16 had recapitalized money to do this, I don't think</p> <p>17 it's unreasonable to sell that product in through</p> <p>18 what I would call three or four turns in the course</p> <p>19 of a year at high margins. That's the Ripley</p> <p>20 business plan, that's why they went into it. They</p> <p>21 weren't planning on having bad product from a bad</p> <p>22 supplier.</p> <p>23 <b>Q. What is the basis for your opinion that</b></p> <p>24 <b>Forza could not sell the product because it</b></p> <p>25 <b>contained DHEA, trace amounts of DHEA, as opposed to</b></p>	<p style="text-align: right;">180</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 bothered to disclose, they might have sold more</p> <p>3 tainted product if they didn't tell people it was</p> <p>4 bad product.</p> <p>5 <b>Q. What is your basis that the trace</b></p> <p>6 <b>amounts of DHEA would have an effect on high school</b></p> <p>7 <b>athletes?</b></p> <p>8 MR. SOLON: Object to the foundation.</p> <p>9 BY MS. ALIKHAN:</p> <p>10 <b>Q. What is your basis on the record for</b></p> <p>11 <b>that?</b></p> <p>12 MR. SOLON: For what?</p> <p>13 BY MS. ALIKHAN:</p> <p>14 <b>Q. That the trace amounts of DHEA would</b></p> <p>15 <b>have an effect on high school wrestlers.</b></p> <p>16 MR. SOLON: Where is that?</p> <p>17 MS. ALIKHAN: That comes from his</p> <p>18 testimony that says the products were tainted and</p> <p>19 couldn't be sold.</p> <p>20 BY MS. ALIKHAN:</p> <p>21 <b>Q. So what is your basis for the fact that</b></p> <p>22 <b>the trace amounts of DHEA would have a negative</b></p> <p>23 <b>effect on high school wrestlers?</b></p> <p>24 MR. SOLON: Object to foundation.</p> <p>25</p>
<p style="text-align: right;">179</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 <b>the fact that they chose to disclose this fact in</b></p> <p>3 <b>their marketing?</b></p> <p>4 MR. SOLON: Object to the form.</p> <p>5 BY MS. ALIKHAN:</p> <p>6 <b>Q. Can you say with a reasonable degree of</b></p> <p>7 <b>certainty that it was the very fact that the DHEA</b></p> <p>8 <b>was in the product or the marketing that Forza did</b></p> <p>9 <b>with respect to its product that caused its losses?</b></p> <p>10 A. You've been asking that question for a</p> <p>11 few minutes. What you're saying is if they failed</p> <p>12 to disclose to the high school and collegiate</p> <p>13 wrestler that they're going to give them a tainted</p> <p>14 product and perhaps act in an immoral way might they</p> <p>15 have sold more product?</p> <p>16 <b>Q. No, that wasn't my --</b></p> <p>17 A. If we don't warn the person that it's</p> <p>18 tainted and mislabeled and it might subject them to</p> <p>19 disqualification, then you might sell more product</p> <p>20 but you would be acting immorally and maybe ruining</p> <p>21 careers. Is that what you're recommending as a</p> <p>22 business plan, immorality and destruction of the</p> <p>23 youths' careers?</p> <p>24 <b>Q. Those words never came out of my mouth.</b></p> <p>25 A. We talked about the -- had they hadn't</p>	<p style="text-align: right;">181</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 BY MS. ALIKHAN:</p> <p>3 <b>Q. What is your basis?</b></p> <p>4 A. Mr. Weesner was cautioned or warned by</p> <p>5 Jennifer Gibson that being involved with a company</p> <p>6 like that would be bad form and not to buy it. So</p> <p>7 if you now wanted to take an immoral approach and go</p> <p>8 out and sell product that would disqualify Olympic</p> <p>9 or college wrestlers that were subject to a drug</p> <p>10 test and sell it to high school kids, then you're</p> <p>11 saying go ahead and act in an immoral way and hurt</p> <p>12 people.</p> <p>13 So maybe Kemp said I am a wrestler</p> <p>14 and I have a clean reputation. I'm not going to</p> <p>15 sell tainted product and hurt reputations and</p> <p>16 careers.</p> <p>17 <b>Q. Are high school wrestlers subject to</b></p> <p>18 <b>drug testing?</b></p> <p>19 A. I don't know.</p> <p>20 MR. SOLON: Let me object to the</p> <p>21 foundation. These are not the subject of his expert</p> <p>22 testimony in this case. Don't you have 12 other</p> <p>23 witnesses to ask these questions to that you already</p> <p>24 have probably ad infinitum on other days? Enough.</p> <p>25</p>

<p style="text-align: right;">182</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 BY MS. ALIKHAN:</p> <p>3 <b>Q. Can you not make speaking objections and</b></p> <p>4 <b>please stop telling me who to question and what to</b></p> <p>5 <b>question them on?</b></p> <p>6 MR. SOLON: Fine. Let's just stop this</p> <p>7 deposition.</p> <p>8 MS. ALIKHAN: For what?</p> <p>9 MR. SOLON: We'll file a protective</p> <p>10 order to shut down the nonsense. He's a damages</p> <p>11 expert. You're asking him about tainted DHEA.</p> <p>12 MS. ALIKHAN: Sir, these are opinions</p> <p>13 that are in his report that I am reading straight</p> <p>14 from. If he can opine on these, I can ask him</p> <p>15 questions and probe into the reliability of his</p> <p>16 research and understanding. That's the point of</p> <p>17 this questioning.</p> <p>18 MR. SOLON: There are many things in</p> <p>19 this report.</p> <p>20 MS. ALIKHAN: And I can delve into all</p> <p>21 of them. So your nonsense about filing a protective</p> <p>22 order is unfounded.</p> <p>23 MR. SOLON: Let's do it. I'm leaving.</p> <p>24 You can't read a report and tell what opinion.</p> <p>25 MR. KRIT: Counsel, is it your opinion</p>	<p style="text-align: right;">184</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 break, we're going to calm this down, we're going to</p> <p>3 make a decision. Let's go off the record. You</p> <p>4 ready?</p> <p>5 MR. KRIT: I can't speak.</p> <p>6 MS. ALIKHAN: Let's go off the record</p> <p>7 for you.</p> <p>8 THE VIDEOGRAPHER: We're off the record.</p> <p>9 The time is 3:34 p.m.</p> <p>10 (Whereupon, there was an</p> <p>11 intermission.)</p> <p>12 THE VIDEOGRAPHER: We're back on the</p> <p>13 record. The time is 3:43 p.m.</p> <p>14 MR. SOLON: In interest in getting this</p> <p>15 done, you may proceed.</p> <p>16 BY MS. ALIKHAN:</p> <p>17 <b>Q. Forza represented that its products were</b></p> <p>18 <b>WADA safe. Do you understand what WADA means?</b></p> <p>19 A. WADA? WADA?</p> <p>20 <b>Q. Yes.</b></p> <p>21 A. I've seen it but I couldn't recite what</p> <p>22 it means. I've seen that at the same time.</p> <p>23 <b>Q. I'll represent to you that's the World</b></p> <p>24 <b>Anti-Doping Association.</b></p> <p>25 <b>If Forza represented that its</b></p>
<p style="text-align: right;">183</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 that mitigation of damages is irrelevant to his</p> <p>3 report?</p> <p>4 MS. ALIKHAN: We're not off the record</p> <p>5 actually.</p> <p>6 MR. SOLON: We're on the record and I'm</p> <p>7 not talking to you.</p> <p>8 MS. ALIKHAN: We'll seek sanctions for</p> <p>9 this.</p> <p>10 MR. SOLON: Your party has a counsel who</p> <p>11 is taking this deposition. She can speak.</p> <p>12 MS. ALIKHAN: Is it your position that</p> <p>13 mitigation is not relevant to this case?</p> <p>14 MR. SOLON: This is what I want to do,</p> <p>15 we're going to take a break.</p> <p>16 MS. ALIKHAN: We're not taking a break.</p> <p>17 Can you answer the question, please? We're on the</p> <p>18 record. We've asked you a question three times that</p> <p>19 you've refused to answer.</p> <p>20 MR. SOLON: Here's what I'm going to do,</p> <p>21 I'm going to take a break. I'm not going to answer</p> <p>22 his question.</p> <p>23 MS. ALIKHAN: I posed the question.</p> <p>24 MR. SOLON: I'm not going to answer your</p> <p>25 question either. Now you know. I'm going to take a</p>	<p style="text-align: right;">185</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 products were WADA safe and it would not cause</p> <p>3 failure of a drug test, would that change your</p> <p>4 opinion as to whether or not Forza incurred losses</p> <p>5 because the product contained trace amounts of DHEA?</p> <p>6 MR. SOLON: Objection to form.</p> <p>7 BY MS. ALIKHAN:</p> <p>8 <b>Q. Do you understand the question?</b></p> <p>9 THE WITNESS: Read it back.</p> <p>10 (Whereupon, the record was</p> <p>11 read as requested.)</p> <p>12 BY THE WITNESS:</p> <p>13 A. No.</p> <p>14 BY MS. ALIKHAN:</p> <p>15 <b>Q. Why not?</b></p> <p>16 A. The existence of DHEA, which was the</p> <p>17 subject of an e-mail exchange between Weesner and</p> <p>18 Gibson, Gibson indicated "I'd stay away from that</p> <p>19 company." That alone is an indication that the</p> <p>20 presence of DHEA affects the sales.</p> <p>21 <b>Q. Do you have an understanding as to</b></p> <p>22 <b>whether or not Jennifer Gibson was a potential</b></p> <p>23 <b>customer of Forza? Do you?</b></p> <p>24 A. Yes.</p> <p>25 <b>Q. What's your understanding?</b></p>

<p style="text-align: right;">190</p> <p>1                   <b>DEPOSITION OF PAUL DUGGAN</b>  2   <b>that correct?</b>  3       A.   I believe that's my number.  4       <b>Q.   Can you describe how you arrived at that</b>  5   <b>number?</b>  6           MR. SOLON: Object. Calls for a  7   narrative.  8   BY MS. ALIKHAN:  9       <b>Q.   Go ahead and answer.</b>  10      A.   The number I believe is 2,759,000, not 3  11   million. And then I list it at Page 10 with six  12   bullets and then I explain those bullets.  13      <b>Q.   Let's talk about the \$365,000. Is that</b>  14   <b>from the purchase of the products from PRL?</b>  15      A.   Yes.  16      <b>Q.   And in your review of the documentation</b>  17   <b>in this case, do you know whether or not Forza had a</b>  18   <b>contingency supplier on hand for these products?</b>  19      A.   I don't know.  20      <b>Q.   Would that have an effect on damages or</b>  21   <b>any of your opinions in this matter?</b>  22      A.   No.  23      <b>Q.   Do you hold any opinions with respect</b>  24   <b>mitigation of damages?</b>  25      A.   Yes.</p>	<p style="text-align: right;">192</p> <p>1                   <b>DEPOSITION OF PAUL DUGGAN</b>  2   If I -- if I can sell it -- I break my iPhone and I  3   can go ahead and fix the screen and I might be able  4   to resell it for 150 bucks. That would be  5   mitigation.  6           In this case, they sold, which I  7   list -- we don't call it mitigation, we call it  8   sales. They sold \$128,000 worth of product. The  9   rest has been written off because it has no value.  10   And they've attempted to sell it. And the books of  11   the company, as done by an outside CPA, not by me,  12   reflect zero inventory because that's its value.  13   And they're unable to sell it despite their efforts.  14      <b>Q.   Where did you get the information that</b>  15   <b>they are unable to sell the product?</b>  16      A.   Mr. Kemp.  17      <b>Q.   When?</b>  18      A.   March and April, 2015. I inquired why  19   there's no more inventory and he said it's written  20   off because, which is the financial statement, it  21   shows it's zero as produced by a third party CPA.  22           And I said, "Why is it written  23   off?"  24           He said, "We tried to sell it and  25   we wrote it off to zero."</p>
<p style="text-align: right;">191</p> <p>1                   <b>DEPOSITION OF PAUL DUGGAN</b>  2      <b>Q.   What are they?</b>  3      A.   The company was able to sell about  4   \$128,000 worth of product. They've tried to get a  5   refund from the -- from Premier to have a do-over  6   which has never happened to them. They haven't  7   refunded the money. And they have attempted, which  8   is part of the financial statements, they have  9   attempted to sell the product unsuccessfully. They  10   can't even scrap it for \$5,000 in a mitigation  11   effort. So it's carried on their books at zero  12   value because it's worthless in the marketplace.  13      <b>Q.   Where is that in your report?</b>  14      A.   The balance sheet of -- let's see. It's  15   Schedule 6. The balance sheet carries no PRL  16   inventory because it's worthless and yet it wasn't  17   sold.  18      <b>Q.   Where are your opinions with respect to</b>  19   <b>mitigation of damages in your report?</b>  20      A.   I don't use the word "mitigation."  21      <b>Q.   Where is it?</b>  22      A.   I just said I don't -- where is it?  23      <b>Q.   Do you understand what mitigation means?</b>  24      A.   Mitigation means that you make an effort  25   to reduce your losses in kind of a layman's sense.</p>	<p style="text-align: right;">193</p> <p>1                   <b>DEPOSITION OF PAUL DUGGAN</b>  2      <b>Q.   Did he say how long they tried to sell</b>  3   <b>the product for?</b>  4      A.   I'm going to say it went to a scrap  5   dealer last October.  6      <b>Q.   Did he say how much he sold it for?</b>  7      A.   Zero. It's unsalable. Zero bid. And  8   that's why it's carried at zero.  9      <b>Q.   Why is it unsalable?</b>  10     A.   Because it's tainted and mislabeled.  11     <b>Q.   Did you see the product listing for the</b>  12   <b>inventory?</b>  13     A.   I don't know what you mean by that.  14     <b>Q.   You said that they were unable to sell</b>  15   <b>it, zero bids.</b>  16     A.   Correct.  17     <b>Q.   Was it on a website for sale?</b>  18     A.   They went to a scrap dealer.  19     <b>Q.   Did you see the listing for the --</b>  20     A.   I did not. It's not salable.  21     <b>Q.   And where did you get that information</b>  22   <b>from?</b>  23     A.   Mr. Kemp. I inquired why there's no  24   inventory on their books and why the losses are so  25   large. And he said, "We spent \$365,050 in</p>

49 (Pages 190 to 193)



194

1 DEPOSITION OF PAUL DUGGAN  
2 inventory. We sold what we could. We tried to  
3 scrap what we could. We offered the rest back to PR  
4 Labs. They refused to repurchase it. And they're  
5 required under the law not to file improper, phony  
6 financial statements so they write it off. That's  
7 the requirement. That's the legal requirement.  
8 **Q. Did you see any documents substantiating**  
9 **what Mr. Kemp stated to you?**  
10 A. Yeah. I have the financial statements  
11 of the company which carries it at zero. That's a  
12 document prepared by a CPA out of Arlington Heights.  
13 **Q. Other than the financial documents, did**  
14 **you see any other document that substantiated what**  
15 **Mr. Kemp said to you with respect to --**  
16 A. Other than their books and records of  
17 the company, no.  
18 **Q. -- where it specifically shows their**  
19 **attempts to sell their product?**  
20 A. Well, if the products have value, then  
21 your accusing Mr. Kemp of tax fraud and financial  
22 fraud and you're accusing the CPA of being  
23 complaisant. So I take the CPA's statement as an  
24 indication of value. I'm not a certified fraud  
25 examiner. It's worthless. They can't get any

195

1 DEPOSITION OF PAUL DUGGAN  
2 money. If PR wants to purchase it back at cost, let  
3 them have it. They can't get a bid so they're  
4 required by the law to write it off. Otherwise,  
5 they'd be filing false financial statements.  
6 **Q. So based on the fact that you don't**  
7 **believe their CPA would file false financial**  
8 **statements, you have no other objective evidence to**  
9 **detail their efforts in selling the product?**  
10 A. The efforts of selling the product are  
11 explicit here. They're shown as sales as poor as  
12 they are of 20,000 in 2012 and 29,000 in 2014.  
13 That's all they're able to sell. Those are the  
14 records of sales. Those are the public documents  
15 that exist for the company.  
16 That being said, in addition, the  
17 conversation between management and the CPA  
18 indicates that the inventory's written off and  
19 expensed because that's the law. That's what  
20 they're required to do so they don't commit fraud.  
21 **Q. So the whole amount is written off,**  
22 **correct?**  
23 A. Correct. They have no bid. They've  
24 been unable to secure a single bid for the product.  
25 **Q. Even though they had \$20,000 of sales in**

196

1 DEPOSITION OF PAUL DUGGAN  
2 **the year 2012, right?**  
3 A. No, no, no, no. They had -- right. And  
4 then they expensed the product sold. The unsold  
5 inventory is written to zero. Not the sold  
6 inventory. The sold inventory goes to cost of goods  
7 sold. The unsold inventory is expensed out because  
8 it's worthless.  
9 **Q. In the next line you have that Lee and**  
10 **Mia garnered around 1.7, \$1.8 million in lost time**  
11 **for Forza.**  
12 A. Let me finish my answer from before.  
13 Because if this is included in the report at  
14 Schedule 7, Page 2 of Schedule 7, which is indicated  
15 as Page 1, it's showing damaged inventory of 290,000  
16 being written off. So that's a document file.  
17 **Q. This is Schedule 7?**  
18 A. Schedule 7. Page 1 is the lead sheet.  
19 Page 2 is comparative income statement. And Page 3,  
20 in the bottom right, is labeled "Draft."  
21 Page 1, about four lines from the  
22 top shows the damaged inventory write-off of  
23 290,000. And it also indicates the sales, which I  
24 reflect on the sales recap on Page 12 of my report,  
25 of 29,000. The remaining inventory is worthless so

197

1 DEPOSITION OF PAUL DUGGAN  
2 they're required by law to write it off; otherwise,  
3 they'd be filing fraudulent statements.  
4 **Q. Other than these financials, did you see**  
5 **any documents that evidenced that Forza was actively**  
6 **attempting to sell these products?**  
7 A. These -- this financial statement  
8 doesn't indicate their efforts. It indicates the  
9 net result of zero. That's what it indicates.  
10 They're worthless. They're written off. That's  
11 what they indicate.  
12 **Q. In the next section you indicate that**  
13 **Lee and Mia spent approximately \$1.8 million in lost**  
14 **time for Forza.**  
15 **How do you come to that number?**  
16 A. You're starting at the bottom of Page 10  
17 of my report?  
18 **Q. No. I'm second bullet of Paragraph 23.**  
19 A. Okay. And then if the first bullet is  
20 covered below under "Goods Purchased," the second  
21 bullet, "Lost Time," is covered on the bottom of  
22 Page 10 and the top of Page 11. And it's Schedule 2  
23 to my report.  
24 **Q. Where did you get those numbers?**  
25 A. From Mr. Kemp and I believe the hours

198

1                   DEPOSITION OF PAUL DUGGAN  
2    came from the company, I'm not sure, given to me by  
3    counsel.  
4       **Q. Did you create this document?**  
5       A. Yes. I put this on an Excel  
6    spreadsheet, yes.  
7       **Q. Where did you get the numbers from?**  
8       A. Management.  
9       **Q. Who in management?**  
10      A. Lee and Mia.  
11      **Q. And what format did they provide you**  
12      **with those numbers?**  
13      A. Week-by-week listing of hours spent.  
14      **Q. Did they provide you with any invoices?**  
15      A. No.  
16      **Q. Any timesheets?**  
17      A. No.  
18      **Q. Any payroll records?**  
19      A. They weren't paid. They spent the time.  
20      **Q. Any calendars?**  
21      A. No.  
22      **Q. Anything to verify whether or not this**  
23      **time was actually spent?**  
24      A. Their statements.  
25      **Q. I want --**

199

1                   DEPOSITION OF PAUL DUGGAN  
2       A. I actually reduced it from what they  
3    gave me.  
4       **Q. What did they give you?**  
5       A. They gave me more hours and I reduced  
6    it.  
7       **Q. How much of the total?**  
8       A. How much is what total?  
9       **Q. The hours they gave you?**  
10      A. If you look at Schedule 1, 2,000 hours  
11    for year 2009, he gave me 2080 in all those years.  
12    I reduced it by two weeks.  
13      **Q. Why did you reduce it?**  
14      A. It's not practical assuming one wouldn't  
15    take a vacation.  
16      **Q. Is it practical to not have invoices or**  
17      **timesheets reflecting time spent on a project you're**  
18      **seeking recovery for?**  
19      A. Yes. You don't know in 2008 that you're  
20    going to have -- you're going to get tainted,  
21    misabeled product from a supplier. You wouldn't  
22    know that four years in advance that you're going to  
23    get shafted out of your money.  
24      **Q. Businesses typically keep some sort of**  
25      **record of time spent in some form, right?**

200

1                   DEPOSITION OF PAUL DUGGAN  
2       A. No.  
3       **Q. Via payroll records or invoices?**  
4       A. No.  
5       **Q. Timesheets?**  
6       A. No.  
7       **Q. Calendars?**  
8       A. No.  
9       **Q. I want to go back to the goods**  
10      **purchased. Under that heading you state that "Forza**  
11      **requested a refund from PRL Labs, and PRL refused to**  
12      **buy back its own product or refund an overpayment of**  
13      **\$6,347."**  
14                   **What's your basis for that**  
15      **statement?**  
16      A. There's been -- I've seen dialogue with  
17    the request.  
18      **Q. Where?**  
19      A. From management in this case about the  
20    refund of 6,000. What are you talking about  
21    specifically?  
22      **Q. Where do you get the basis that PRL, A,**  
23      **refused to refund Forza?**  
24      A. Mr. Kemp.  
25      **Q. When?**

201

1                   DEPOSITION OF PAUL DUGGAN  
2       A. In the last two months. I'm trying to  
3    find out what happened to the product, what did we  
4    pay for it, that's covered in the 150 to 215, and  
5    what's remaining and what's written off, which is  
6    what's written off the exhibit we just went through,  
7    Schedule 7.  
8       **Q. Did you see any documents where -- that**  
9      **illustrated Forza requesting a refund from PRL?**  
10      A. Yes, I've seen some correspondence.  
11      **Q. What documents?**  
12      A. I believe an e-mail exchange. They were  
13    looking for a refund. That's what this whole  
14    lawsuit is about.  
15      **Q. Where do you see that PRL refused? What**  
16      **do you base that on?**  
17      A. Lee Kemp. Why are we sitting here?  
18    We're sitting here because there's litigation over  
19    tainted product which you don't want to concede.  
20    I'm just giving this as a fact.  
21      **Q. Mr. Duggan, I'm not the one being**  
22      **deposed. I don't appreciate this.**  
23      A. We're in a litigation here. You're  
24    trying to take my testimony far outside of my expert  
25    report.

226

1 DEPOSITION OF PAUL DUGGAN

2 Q. What is your basis for the inclusion of

3 Olympic development in the damages calculation?

4 A. The -- Forza intended to make a big

5 splash at the Olympics, be a sponsor, market their

6 product. They made a movie about Lee Kemp and his

7 life and his ups and downs. And they incurred costs

8 towards the movie, in the movie development, and it

9 was going to be part of their marketing.

10 When the product wasn't available

11 for sale at the Olympics the costs were lost, sunk.

12 Q. What is the connection between the

13 products being available at the Olympics and a

14 documentary about Lee Kemp?

15 A. Well, the e-mail attached as -- to

16 Schedule 3 from Mia Scheid outlines from Mia why it

17 was a documentary, it was set to premier. She's

18 also telling Mr. Niro to get Lee's expenses from

19 Lee, lists her expenses. So it tells what they did,

20 why they did it. So it comes from Mia Scheid.

21 Q. So where does it say that the production

22 of this documentary was contingent upon the products

23 provided by PRL?

24 A. It doesn't, if you read it literally. I

25 would have to reread it. But I would have to --

227

1 DEPOSITION OF PAUL DUGGAN

2 they were going to present -- the movie was going to

3 premier. When the product didn't show up and when

4 it did show up it was mislabeled and tainted, they

5 couldn't go through with it.

6 Q. Do you have an understanding that Forza

7 actually did attend the U.S. Olympics with product

8 in hand?

9 A. I don't know.

10 Q. And they provided samples to Olympians

11 at the Olympics?

12 A. I don't know.

13 Q. Does that change your opinion as to

14 whether or not this was a direct loss to Forza as a

15 result?

16 A. Samples had nothing to do with Olympic

17 costs or the movie development. No, it wouldn't

18 change my opinion. The movie didn't premier, the

19 costs were incurred.

20 Q. And it's your opinion that the movie

21 didn't premier because of something that PRL did?

22 A. With the tainted product they weren't

23 able to sell the product and have the Olympic

24 sponsorship and all the benefits they were going to

25 enjoy from the connection so the money was wasted.

228

1 DEPOSITION OF PAUL DUGGAN

2 Q. Did you see a contract between Forza and

3 the producer of this documentary?

4 A. No.

5 Q. Do you have an understanding of the

6 terms of that -- of any agreement between Forza and

7 the producer of this documentary?

8 A. No.

9 Q. So you relied upon Forza's assertions

10 for that opinion?

11 A. I'm basing it on this e-mail here which

12 I attached as Schedule 3, or to Schedule 3.

13 Q. I'm going to hand you Duggan Exhibit 13.

14 (Whereupon, Duggan Exhibit 13

15 marked as requested.)

16 (Whereupon, the document was

17 tendered.)

18 BY MS. ALIKHAN:

19 Q. This is the income tax return for Forza

20 Technologies for year 2012, correct?

21 A. It appears to be.

22 Q. Did you review this document in

23 ascertaining your damages calculation?

24 A. No, I did not.

25 Q. Did you ask to review any tax returns in

229

1 DEPOSITION OF PAUL DUGGAN

2 ascertaining your damages calculation for Forza?

3 A. I was using financial statements which

4 were accrual basis, not tax returns which are cash

5 basis so I would -- I could relate the two together.

6 But for accounting purposes you would use accrual

7 basis financial statements versus cash basis tax

8 returns.

9 Q. Did you ask to see the document?

10 A. No.

11 Q. On the last page you'll see -- first,

12 can you determine whether or not this is a complete

13 tax return?

14 A. It may be.

15 Q. You can't tell for sure?

16 A. I didn't prepare it. You'd have to ask

17 Manella if there could be some other document

18 attached. But it may be the complete tax return.

19 Q. Have you ever completed a tax return for

20 an S-corporation?

21 A. Probably 400 of them.

22 Q. But you can't tell whether or not this

23 is --

24 A. Rules have changed. I probably have

25 signed 10,000 tax returns. Rules have changed.

230

1 DEPOSITION OF PAUL DUGGAN  
2 Sometimes there's requirements based on the volume  
3 of the business that certain schedules aren't  
4 required to be attached. So that would allow for a  
5 tax return like this which is strictly a cover page.  
6 Some size partnerships and S-corps don't require  
7 balance sheets anymore.  
8 **Q. Did you -- can you turn to the last page**  
9 **of that document? Is there any reason why**  
10 **deductions would be blocked out?**  
11 MR. SOLON: Object to foundation.  
12 BY MS. ALIKHAN:  
13 **Q. You can answer.**  
14 A. Would there be any reason?  
15 **Q. Yes. What sort of things would be**  
16 **listed in deductions that would be required to be**  
17 **left out?**  
18 MR. SOLON: Object to foundation.  
19 You're asking for complete speculation.  
20 MS. ALIKHAN: He's prepared these types  
21 of documents before. I'm just asking.  
22 MR. SOLON: He has no personal knowledge  
23 of this.  
24 BY THE WITNESS:  
25 A. I've never seen a document like this

231

1 DEPOSITION OF PAUL DUGGAN  
2 with this blocked out. I don't know if it's done by  
3 the computer program. It doesn't look like it's  
4 done manually.  
5 BY MS. ALIKHAN:  
6 **Q. So this is not how it would appear**  
7 **regularly?**  
8 A. Pardon me?  
9 **Q. This is not how it would appear**  
10 **regularly?**  
11 A. I don't know that. I've never seen  
12 anything like this. That's not to say that it's  
13 right, wrong or anything. I've never seen anything  
14 like it. I'm trying to compare it to the financial  
15 statement to see if it rings true.  
16 **Q. I don't really need it. I'm just trying**  
17 **to figure out why that area is blacked out.**  
18 A. Well, again, I would say that it's cash  
19 basis in the financial statement you rely on or I  
20 relied on is in my right hand which --  
21 **Q. That's not my question.**  
22 A. I understand it's not your question.  
23 I'm trying to give some clarity that people don't  
24 rely on 1120-S tax return prepared on a cash basis  
25 when you have a better document.

232

1 DEPOSITION OF PAUL DUGGAN  
2 **Q. The plaintiff's attorney is going to be**  
3 **able to ask you some questions later on when I'm**  
4 **finished so he could ask all the clarification**  
5 **questions you need. But my question didn't pertain**  
6 **to what you just testified to.**  
7 A. I'm trying to help you if you don't  
8 understand it. I'm trying to help explain why you  
9 wouldn't even look at this.  
10 Go ahead and reask the question.  
11 MR. SOLON: And for the record, the tax  
12 returns are not relevant evidence in a case like  
13 this, which is not a tax case. And there's law on  
14 that which you can look up before coming to a  
15 deposition and asking hours of questions about tax  
16 returns.  
17 MS. ALIKHAN: Thanks, again, for your  
18 advice.  
19 BY MS. ALIKHAN:  
20 **Q. You also show that Mia Scheid incurred**  
21 **\$65,000 in travel expenses.**  
22 **What is your basis for that?**  
23 A. It's footnoted as Schedule 3, which is  
24 the e-mail from Mia. It indicates she probably  
25 spent more than 65, I only put down the minimum of

233

1 DEPOSITION OF PAUL DUGGAN  
2 65.  
3 **Q. Did she provide you with any receipts**  
4 **for these?**  
5 A. She did not.  
6 **Q. Did you see any invoices for this**  
7 **travel?**  
8 A. No.  
9 **Q. Any credit card statements?**  
10 A. No.  
11 **Q. You indicate in your report that Forza**  
12 **experienced employment costs as part of its damages**  
13 **in this case.**  
14 **How many employees were employed at**  
15 **Forza?**  
16 A. I don't know.  
17 **Q. Do you know the names of the employees?**  
18 A. No. I have a list of the employment  
19 costs which I scheduled at Schedule 5, and it lists  
20 employees there.  
21 **Q. Who gave you this document?**  
22 A. (No response.)  
23 **Q. Did you prepare this document?**  
24 A. I did not. It came from Forza.  
25 Actually, it came from Fitness Arts.

234

1 DEPOSITION OF PAUL DUGGAN

2 **Q. How do you know that?**

3 A. Because it's their document.

4 **Q. How can you tell?**

5 A. Not Forza document. It's just -- it's

6 Fitness Arts' employees and the percentage of time

7 they spent on Forza.

8 **Q. And how could you tell these are Fitness**

9 **Arts' employees?**

10 A. I know from Laura Mann that I've spoken

11 to because she was the coordinator to get me the

12 documents. I would request documents from Laura.

13 She was authorized to speak to me by Lee and then

14 she would send those to counsel and they would

15 provide them to me.

16 **Q. How do you know that Keith Bardin is an**

17 **employee of Fitness Arts?**

18 A. It was indicated to me by whoever sent

19 the schedule. But I didn't independently verify

20 that he worked or works there. It looks like he no

21 longer -- he may still work there but didn't spend

22 time on Forza.

23 **Q. Did you independently verify whether**

24 **Cheyenne Johnson worked at Forza during these times?**

25 A. No.

235

1 DEPOSITION OF PAUL DUGGAN

2 **Q. What about Elizabeth Miner?**

3 A. No.

4 **Q. Do you have an understanding as to what**

5 **positions they held at Fitness Arts?**

6 A. No.

7 **Q. Do you have an understanding as to**

8 **whether or not they were full-time or part-time**

9 **employees?**

10 A. No.

11 **Q. Were you ever given any billing with**

12 **respect to these numbers?**

13 A. No.

14 **Q. Any invoices?**

15 A. No.

16 **Q. Did you independently verify whether or**

17 **not these wages came from Fitness Arts or Forza?**

18 A. No.

19 **Q. Did you see any W2s with respect to**

20 **these numbers?**

21 A. No.

22 **Q. Did you ask for W2s?**

23 A. No.

24 **Q. Did you ask for invoices?**

25 A. No.

236

1 DEPOSITION OF PAUL DUGGAN

2 **Q. Did you ask for anything to substantiate**

3 **the numbers on these documents?**

4 A. When you're saying "invoices," I don't

5 think invoices would pertain here so there's nothing

6 to ask for.

7 **Q. Billings?**

8 A. No. There wouldn't be billings as far

9 as what's indicated. They spent some time on Forza.

10 **Q. In your sales recap you indicate that**

11 **Forza had 77,000, about, approximately, dollars in**

12 **sales.**

13 **Do you know how much of that was**

14 **PRL product?**

15 A. No. Not offhand from memory. Let me

16 see.

17 **Q. Where did you get that number from?**

18 A. It seems to be a couple hundred dollars

19 different from this financial statement which shows

20 76, not 77.

21 **Q. Which financial statement are you**

22 **referring to?**

23 A. Exhibit 11.

24 **Q. The P&L statement for 2013?**

25 A. Yes.

237

1 DEPOSITION OF PAUL DUGGAN

2 **Q. Did you review that document in**

3 **preparation for your report?**

4 A. You know, actually, this document that

5 you provided me is only 11 months. It won't tie to

6 the information because it's missing the 12th month.

7 **Q. I'm asking you where you got your**

8 **information with respect to the sales?**

9 A. I must have received a 12-month

10 financial statement and copied the wrong item

11 because that doesn't tie out here. But it's very

12 consistent with this document but it's -- this is 11

13 months, Exhibit 11. So it would have come from

14 Forza.

15 **Q. Is there anything on Exhibit B that**

16 **would refresh your recollection as to where you got**

17 **that information from?**

18 A. Exhibit B?

19 **Q. Duggan Exhibit 3.**

20 A. Again, I think we've been through this.

21 But at Schedule 7, I recap the income statements for

22 2011 through 2014. I thought I had attached the

23 financial statements and it looks like I Xeroxed

24 them incorrectly.

25 **Q. So you have the 2013 financial**

98:24 99:11	199:24	200:7	<b>careers</b>	34:2 35:20	173:9 230:3
99:22,23,24	<b>business's</b>	<b>call</b> 121:12	149:15,17	35:25 38:18	<b>certainty</b>
100:8,10	81:8	121:13,19	151:12	38:21	79:19 179:7
101:19	<b>buy</b> 64:10	125:12	179:21,23	124:15	<b>certificate</b>
102:22	145:5 181:6	171:16,20	181:16	126:25	260:6
106:11,18	186:6	178:18	<b>carefully</b>	210:22	<b>certified</b> 2:8
106:20,24	200:12	192:7,7	261:3	<b>cash</b> 77:11,21	2:10 6:12
107:4,13	<b>buys</b> 140:5	<b>called</b> 2:2	<b>carried</b>	80:19 87:12	12:25 52:10
109:14,16		13:19 16:15	191:11	87:14 92:20	52:19 153:9
112:23	<b>C</b>	16:21 19:11	193:8	93:8 98:17	194:24
113:8,16	<b>C</b> 259:4	19:20 27:12	<b>carries</b>	141:14,19	259:6,8
118:10,18	<b>Cael</b> 104:22	51:7 77:17	191:15	142:12,18	260:7
119:9,15,23	134:24	156:25	194:11	142:19,22	<b>certify</b> 78:9
129:13,16	136:17,18	160:16	<b>cars</b> 99:3,10	143:10	248:7,17,20
129:17	137:9	<b>calling</b> 96:5	99:13	144:2 145:2	258:10
131:6 142:3	<b>calculate</b>	<b>calls</b> 31:15	<b>Carter</b>	165:17	259:8,18
142:6 144:5	49:16,22	121:21	137:18	166:6	260:2,6
145:18	189:25	125:14	<b>case</b> 6:9 7:18	177:18	<b>cetera</b> 75:22
146:3,12,17	253:8	126:24	9:11 33:9	210:5	<b>chain</b> 173:17
146:22	<b>calculated</b>	158:10	33:19 34:8	214:21	<b>Chamberlain</b>
147:21,24	30:24,24	190:6 242:4	37:7,8,10	215:11	134:14,19
151:25	49:17	<b>calm</b> 184:2	37:12,18,20	229:4,7	<b>Chamberla...</b>
152:3,11,14	115:16	244:3,12	38:2 41:3	231:18,24	134:16
152:18,22	132:12	<b>campaign</b>	41:15 51:23	<b>casual</b> 139:8	<b>chance</b>
153:8,10,16	152:23	163:18	79:20 99:17	<b>categories</b>	137:24
153:18,25	219:10	<b>campaigns</b>	101:3	27:10	<b>change</b> 9:12
155:5,12,21	<b>calculates</b>	163:4,11	102:10	<b>category</b>	15:7 17:4
157:19	176:8	<b>cancerous</b>	110:19	30:19	21:8 74:9
159:3	<b>calculating</b>	25:16	115:2 130:4	<b>cause</b> 185:2	74:13,23
160:24	52:15 103:6	<b>capable</b>	151:18	<b>caused</b> 159:8	108:8,9
161:5,21	<b>calculation</b>	154:14	152:12	174:10,20	130:9,12
162:5	31:23 153:6	175:18	181:22	177:5 179:9	185:3
165:17	203:19	251:3	183:13	<b>cautioned</b>	204:18,19
168:9,13	204:24	<b>capacity</b>	190:17	181:4	204:22
170:13,17	205:5,6,11	11:23 55:7	192:6	<b>cease</b> 19:14	219:18
177:2,7,10	226:3	55:13	200:19	<b>Celebrex</b>	227:13,18
178:13,20	228:23	<b>Capital</b> 16:12	206:18	24:24	255:6 262:9
179:22	229:2	19:21,22	214:12,14	<b>celebrity</b>	262:11,13
205:15	<b>calculations</b>	20:13 21:12	232:12,13	139:22	262:15,17
215:3 219:9	44:12 156:4	21:13,17	233:13	<b>cell</b> 23:22	262:19
223:3 230:3	205:15,23	22:5	239:17,25	24:2 28:24	<b>changed</b> 19:3
240:12,16	<b>calendar</b>	<b>caption</b> 103:2	241:25	41:25	21:5 229:24
241:21	62:23	<b>car</b> 62:16	242:17	<b>cellular</b> 28:19	229:25
251:2	138:19	<b>card</b> 13:21	<b>cases</b> 30:17	28:20	<b>changes</b>
253:25	167:23	218:14	31:6,7,14	<b>certain</b> 27:9	203:22
<b>businesses</b>	250:18	233:9	31:22 32:3	27:13	261:9 262:5
36:10 154:6	<b>calendars</b>	<b>career</b> 29:3	32:4,6,8	119:22	<b>chaotic</b>
158:25	198:20	30:10,11	33:3,7,11	159:23	224:17

<b>characteriz...</b>	240:15,20	<b>collections</b>	<b>commence...</b>	92:25 93:7	27:16,20
45:19	240:20	159:12	259:9	97:2,4,24	41:25
<b>charging</b>	241:12,15	<b>college</b> 12:6	<b>comment</b>	102:13	<b>compassion...</b>
127:4	<b>clarification</b>	22:9,12	45:12 92:21	103:11	25:19
<b>charter</b> 23:12	9:7 232:4	60:3 136:20	<b>commit</b>	106:17	<b>compete</b>
<b>chartered</b>	<b>clarify</b> 256:5	140:16	195:20	113:9 116:6	28:24
23:13,13,14	<b>clarity</b>	181:9 204:4	<b>Committee</b>	117:2	<b>competing</b>
<b>check</b> 58:7	231:23	<b>collegiate</b>	161:6	118:14,16	136:15
82:24 83:3	<b>clean</b> 7:24	136:16	170:22	118:17,21	<b>competition</b>
165:10	8:8 11:4	179:12	171:3 187:2	118:24	162:15
<b>checklist</b> 44:8	48:14	189:4	<b>commonalty</b>	119:4,7,11	<b>competitors</b>
<b>Cheyenne</b>	181:14	<b>colon</b> 25:15	109:10,11	129:7 133:8	160:3
234:24	<b>cleaned</b> 43:13	<b>color</b> 35:7	<b>commonse...</b>	133:10	161:25
<b>Chicago</b> 1:15	51:8	<b>column</b> 253:2	150:20	147:17	162:23
2:11 3:7 4:6	<b>clear</b> 255:10	253:4	151:14	160:16,19	<b>compilation</b>
6:6 14:21	<b>clearly</b> 93:12	<b>combination</b>	<b>communica...</b>	172:17	80:18
<b>Chicagoland</b>	93:13	28:24	187:11	181:5	<b>compiled</b>
53:14	134:18	138:14	<b>communica...</b>	185:19	77:10
161:12	142:16	<b>combined</b>	187:11	187:8 189:3	<b>complaisant</b>
<b>children</b>	145:4 209:8	250:25	<b>communica...</b>	191:3	194:23
25:17 36:21	209:9 239:3	<b>Comcast</b>	27:11,18	192:11	<b>complete</b>
<b>children's</b>	<b>Clescери</b>	26:24	186:9	194:11,17	30:2 49:21
127:13	16:17,17,19	<b>come</b> 25:16	247:21,24	195:15	74:2 76:18
130:16	17:7,14,21	60:21 71:14	<b>community</b>	198:2	153:11
<b>China</b> 36:9	18:11 33:10	99:21	103:13,18	215:25	154:21
38:16	<b>client</b> 36:11	109:16	103:21	225:6	155:8,20
<b>choose</b> 99:25	38:22 127:4	120:4	140:15	249:16	210:15,20
<b>chose</b> 75:3,3	<b>clients</b> 19:5	136:25	<b>companies</b>	251:10	212:22
179:2	126:24	142:13	22:25 25:22	<b>company's</b>	229:12,18
<b>chronology</b>	<b>clock</b> 28:5	144:9 156:5	28:25 29:8	76:21 77:4	230:19
17:15	<b>closely</b> 74:24	197:15	29:11 33:20	98:10 209:6	259:15
<b>cite</b> 110:9	<b>CLR</b> 1:21	206:14	41:22 42:2	<b>comparative</b>	<b>completed</b>
<b>cited</b> 150:3	260:16	207:3,7	42:8,11	196:19	229:19
<b>cites</b> 254:24	<b>club</b> 140:15	215:3	131:25	205:25	<b>completely</b>
<b>Civil</b> 1:6 2:4	<b>clubs</b> 148:9	237:13	132:9	206:11	86:18 202:5
247:11	148:20	239:8	<b>company</b>	<b>compare</b>	<b>completion</b>
<b>claim</b> 161:22	150:8	242:16,21	14:9 19:8	138:8	40:3
204:24	154:11	<b>comes</b> 136:17	20:25 21:19	145:16	<b>component</b>
219:21	170:14	136:18	21:23 23:6	162:24	28:23
240:4	<b>clues</b> 45:16	142:6	24:4,6	221:20	147:24
241:19,20	<b>coach</b> 103:19	180:17	25:22,24	231:14	<b>components</b>
<b>claimed</b>	162:18	225:5	26:10,12	<b>comparing</b>	28:5 99:21
223:20	<b>Coast</b> 26:2	226:20	27:11 29:15	222:6	<b>Compound</b>
240:8	<b>code</b> 2:4 79:7	<b>coming</b>	32:22 33:12	<b>comparison</b>	249:18
<b>claiming</b>	250:11	145:17	33:14,16	119:6	<b>comprehen...</b>
161:19	<b>coffee</b> 50:5	232:14	34:11 53:14	<b>Compass</b>	154:7
<b>claims</b> 150:6	51:2,6,11	<b>command</b>	53:24 54:7	26:7,12,13	<b>comprise</b>
239:17,25	<b>collect</b> 66:5	173:17	74:19 83:23	27:8,12,12	205:21

EXHIBIT

B



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

LK NUTRITION, LLC,

Plaintiff,

v.

PREMIER RESEARCH LABS, LP,

Defendant and Counterclaimant,

v.

LK NUTRITION, LLC,  
LEE KEMP and MIA SCHEID,

Counterclaim-Defendants,

---

MIA SCHEID,

Counterclaimant,

v.

PREMIER RESEARCH LABS, LP,

Counterclaim-Defendant,

and

ROBERT J. MARSHALL,

Third-party Defendant.

---

Civil Action No. 12-cv-07905

Honorable Joan B. Gottschall

Magistrate Judge Young B. Kim

**EXPERT REPORT OF PAUL J. DUGGAN  
PURSUANT TO FED.R.CIV.P. 26(a)(2)(B)**

**March 20, 2015**

Confidential -- Attorneys' Eyes Only  
Subject to Protective Order

## **I. INTRODUCTION**

1. My name is Paul J. Duggan and I have been retained by LK Nutrition LLC (formerly known as Forza Technologies) ("LK" or "LK/Forza") to act as an expert in the calculation of damages. In this report, I am providing my opinions as to damages due LK in this case as a result of the breach of contract and fraud claims made against Premier Research Labs, LP and Robert J. Marshall. (collectively, "Premier"). My opinions are based on the assumption that there is liability.

2. I have prepared various schedules and calculations that are attached to this report. I may in fact utilize this information as well as additional visual presentation materials that have not yet been prepared at trial. I will provide those materials through counsel for LK to Premier at an appropriate time. Those materials may include charts, tables, and any other forms of exhibits necessary to illustrate my opinions at trial.

## **II. QUALIFICATIONS AND BACKGROUND**

3. I am the President of Jackson Capital Management, LLC, founded in 1993, which specializes in hedge fund management, investment analysis and business valuations and small business accounting. I had previously founded and managed the accounting firm of Duggan, Kenning & Gemini, LLC, from 1988 to 2000, which provided litigation support and technology transfer consulting. From 1976 to 1988, I founded the accounting firm Duggan & Clesceri, Ltd., specializing in a certified public accounting practices. My work experience has included preparing company financial statements, performing financial audits, preparing individual and business income tax returns, performing business valuations, and providing consulting and expert testimony in the area of licensing and damages calculations.

4. My expertise is in accounting, generally, and financial assessment of business value, business and intellectual property valuation and licensing and damage analyses for litigation. I have been providing such consulting services since as early as 1976. I have previously been engaged as a consultant and as a testifying expert in at least 40 legal proceedings involving the calculation of damages. I have testified at trial or by deposition in at least 30 of those legal proceedings. I have given trial testimony in federal courts in the states of Virginia, Illinois, Connecticut, Wisconsin, Iowa, California, New York, Washington, Michigan, Massachusetts, Oregon, Pennsylvania, Texas, and Utah. This testimony included the calculations of damages related to lost profits, reasonable royalty, price erosion, trade secret misappropriation and breach of contract.

5. I have served on the Boards of Directors for publicly-held companies PS Financial, Damen National Bank and Cell Pathways, Inc. and on privately-held companies Marinette Marine Corporation, TV Compass, Inc., Evolve Solutions, Inc. and Epay Systems, Inc. I have also served as Chairman on the charitable Boards of Erin's Handicapped Children's Fund and Brother Rice High School Capital Campaign, sat on the Board of Directors for Chinese Orphan Relief Fund Board out of Beijing China and as Chairman Emeritus for Love Without Boundaries.

6. I am a Certified Public Accountant licensed or registered in the State of Illinois since 1974. I obtained a Bachelor's Degree in Business, with a major in accounting, from Loyola University in 1974. I have attended throughout my career various educational seminars and conferences that have related to the areas of audit, accounting, taxes, business valuations, litigation services and damages calculations.

7. I have participated in courses on patent damages methodology for the Practicing Law Institute, an organization comprised generally of lawyers.

8. A listing of my qualifications, including a list of deposition and/or trial testimony I have given within the last four years, is attached as Exhibit A.<sup>1</sup> The nature of my work experience and academic credentials are also included in my curriculum vitae.<sup>2</sup>

9. I am being compensated based on the number of hours I, and those assisting me, perform multiplied by our hourly rates. My current hourly billing rate is \$500 per hour.

### **III. LK AND FITNESS ARTS**

10. LK/Forza was founded by Mia Scheid and Lee Kemp. Ms. Scheid is an entrepreneur who founded and operates a successful company known as Fitness Arts in Palatine, Illinois. Mr. Kemp is a former three-time NCAA and three-time world amateur wrestling champion and an Olympic coach. His skills and achievements as an amateur wrestler are legendary and they make him a highly sought-after spokesman and commentator in amateur wrestling events like the NCAA and Olympic wrestling championships.

11. Fitness Arts has operated a business in which it purchases nutritional supplements from Premier and others and resells them to address the nutritional needs of customers and to improve their health, fitness and athletic performance. Fitness Arts customers include high school and college athletes and, on occasion, even professional athletes.

---

<sup>1</sup> Exhibit A

<sup>2</sup> Exhibit C

12. Fitness Arts' business began operating in 1999 with no annual nutritional supplement sales and progressed in 2001-2002 from \$10,000 per year in supplement sales to \$500,000 per year in sales by 2011-2012. By then, Fitness Arts had become a highly successful and profitable business and Fitness Arts actually supplied nutritional supplements to wrestlers from youth, high school and college levels before the formation of Forza in 2011. Fitness Arts explosive sales growth include an increase from \$131,393 in sales for 2006 to \$405,595 in sales for the calendar year of 2007. Sales information appears in **Section V Direct Losses**

13. Mr. Kemp, in turn, is in a unique position to promote the sale of nutritional supplements to high school and college wrestlers, many of whom belong to wrestling clubs. Mr. Kemp is known and respected by most coaches and has an easy entry to most wrestling clubs and high school and collegiate programs.

14. Lee Kemp was actually an employee of Fitness Arts during which time he brought in high school and college wrestlers into Fitness Arts facilities to personally train them and attempt to sell fitness supplements to them. Lee Kemp was able to bring many wrestlers into Fitness Arts because of his name recognition. This established business showed sufficient potential that Lee Kemp and Mia Scheid used this same model to form Forza. Forza's business was aimed at this exact market -- selling fitness supplements, using Lee Kemp's name recognition to high school, college and other amateur wrestlers.

15. In my opinion, Ms. Scheid and Mr. Kemp together had the ability to expand an already existing successful business by selling a proprietary line of nutritional supplements to athletes if the products had been supplied to them on a timely basis

during the Olympic year, were not mislabeled and were not tainted by banned substances like DHEA.

#### **IV. LOST PROFITS**

16. I do not believe it is speculative but, rather, believe it is reasonably certain that Mr. Scheid and Mr. Kemp could have extended the existing business of Fitness Arts to add a line of specifically formulated nutritional supplements aimed at amateur wrestlers. First, the LK/Forza business was simply an expansion of the existing Fitness Arts business, which was already selling as much as \$500,000 per year in nutritional supplements made by the same company, PRL.<sup>3</sup> Second, Fitness Arts, through Mr. Kemp, had already begun selling PRL-made nutritional supplements to amateur wrestlers who would come to Fitness Arts' facilities, worked with Mr. Kemp and were being counselled and trained by him on fitness, nutrition and the benefits of supplements. The LK/Forza business was not similar, it was the same as what was already started at Fitness Arts. Third, the whole idea for LK/Forza originated from the success Fitness Arts was having selling nutritional supplements to people interested in health and fitness. This was, in effect, the mere extension of an existing business, not the establishment of a new business. Fourth, Fitness Arts (with Mr. Kemp helping to promote and sell PRL supplements to amateur wrestlers) was already in business at the time LK (then Forza Technologies) was formed in 2011. Fifth, Ms. Scheid and Mr. Kemp (with help from Ms. Scheid's mother, a physician specializing in children's health) formulated a proprietary line of supplements for amateur wrestlers and even sought patent protection for its formulations. The fact of proprietary formulations covered by a

---

<sup>3</sup> See Schedule Four

patent gave LK/Forza a potentially exclusive position in its space. Sixth, LK/Forza had the endorsement of USA Wrestling as the only authorized source for approved nutritional supplements for wrestlers.<sup>4</sup> No other company had that endorsement or access to the proprietary products.<sup>5</sup> USA Wrestling is a national organization that reaches 180,000 members, consisting of wrestlers, coaches, officials, state federations and others interested in the sport.<sup>6</sup> USA Wrestling permitted Forza/LK to use its extensive database. Seventh, Mr. Kemp is a well-known, nearly legendary figure in amateur wrestling. He is like the Michael Jordan of amateur wrestling. If Michael Jordan formed a company to sell supplements to amateur basketball players, one could forecast a better-than-average probability of success. Eighth, LK/Forza had secured sufficient funding (see Goods Purchased) to purchase the initial round of proprietary products from PRL (enough to generate twice the amount in cash to then purchase second and third full cycles of products). The supplier of the products was established; it had years of successful operations in making and selling nutritional supplements to a wide spectrum of customers. Ninth, the proprietary products were being introduced during the Olympic year where there was special attention on all Olympic sports, including wrestling. Tenth, Olympic wrestlers (maybe the most famous current Olympic champion, Jordan Burroughs, had used and endorsed the LK/Forza products. Burroughs actually won an Olympic gold medal in 2012. Eleventh, Lee Kemp's name and image was associated with the LK/Forza products much like Michael Jordan is associated with Nike shoes. Twelfth, LK/Forza had a detailed business and marketing

---

<sup>4</sup> Exhibit B Item 3

<sup>5</sup> Exhibit B Item 3

<sup>6</sup> Exhibit B Item 3

plan done by a highly-skilled professional, so the forecast of sales and profits was not speculative.

17. When Nike signed on Michael Jordan, they created the Air Jordan line. It was a special line of gym shoes for basketball players. In the instant case, Fitness Arts created the LK/Forza brand to market just the product to wrestlers. Air Jordan was not a new business, but an extension of the Nike Brand. LK was not a new business but a way to market the LK/Forza (Lee Kemp) brand to athletes. The formation of LK/Forza brand was for marketing. In a similar fashion, Toyota created the Lexus Brand and Honda created the Acura brand. Air Jordan, Lexus and Acura are not new companies, but separate franchises for marketing with ownership common to Nike, Toyota and Honda.

18. I think the single most important issue is that LK / Forza was funded. They had \$550,000 in funding on hand. This was not a pipe dream. They were funded with a source of product. They had an existing \$500,000 sales base along with an established world class reputation in the wrestling and athletic community.

19. In short, it is my opinion that the projected profitability of LK's business is not based upon the prior success of a similar business; it is based upon the actual operation and success of an existing business at Fitness Arts. This was apparently, known to Mr. Marshall who owned and operated PRL and he expressed an interest in himself owning a portion of LK/Forza.

20. I have reviewed the Business Plan prepared by Michael Ripley attached as Exhibit B.<sup>7</sup> Mr. Ripley is a Certified Public Accountant. His Business Plan is thorough and complete and predicts a very conservative market penetration. Mr. Ripley

---

<sup>7</sup> Exhibit B Item 3



forecast of \$47 million in sales and \$11.3 million in profits for the three-year period from 2012 through 2014<sup>8</sup>. In my opinion, profits of at least \$10 million from the LK/Forza business were both reasonable and achievable.

21. In the 2012-2013 timeframe, there were no direct competitors targeting amateur wrestlers. Nevertheless, the products required and marketing approaches for sales to persons interested in fitness and those engaged in competitive athletics would be substantially the same. There have since been entities who now sell nutritional supplements to wrestlers who previously sold more general purpose supplements and they have had success.

## **V. DIRECT LOSSES**

22. Forza suffered direct losses as follows from these problems caused by PRL: (1) PRL failed to timely supply product in December 2011 for introduction to the 2012 Olympic year;<sup>9</sup> (2) many of the PRL products that were supplied were mislabeled and, thus, was not saleable;<sup>10</sup> (3) some of the products were tainted with a banned substance, DHEA,<sup>11</sup> which reflected poorly on LK/Forza's image and its source of supply, making it virtually impossible for them to sell products to amateur athletes. A consultant contacted by Iowa State University after Mr. Kemp had a commitment from Iowa State's coach to purchase Forza's supplements said this after learning of the DHEA contamination: "I would say this might be a good company to stay away from if they have had a positive testing for contamination, even though it says it was at a low level; it seems it would be a red flag" (Exhibit 2 to Timothy Weesner Deposition).

---

<sup>8</sup> Exhibit B Item 3

<sup>9</sup> Exhibit B Item 1

<sup>10</sup> Exhibit B Item 1

<sup>11</sup> Exhibit B Item 1

23. The direct losses are at least \$2,759,928.70 calculated as follows:

- \$365,050.00 purchase of product from PRL;<sup>12</sup>
- \$1,794,375.00 in lost time by Lee Kemp and Mia Scheid;<sup>13</sup>
- \$ 310,916.59 in operating losses at LK Nutrition, not counting the unsalable inventory.<sup>14</sup>
- \$38,257.70 in Lee Kemp Development Expenses.<sup>15</sup>
- \$165,000.00 Olympic costs and movie development.<sup>16</sup>
- \$86,329.41 Fitness Arts employment costs spent on LK/Forza.<sup>17</sup>

#### **GOODS PURCHASED**

LK/Forza purchased product from PR Labs. They made two payments as follows: \$150,000 on November 22, 2011 and a wire transfer for \$215,050 on April 17, 2012. They used some product for samples, sold \$20,820 worth of product in 2012 and wrote off the remaining product with a write down or loss on the ending inventory of \$290,619.94. Forza requested a refund from PR Labs and PRL refused to buy back its own product or refund an overpayment of \$6,347.00.

#### **LOST TIME**

Lee Kemp began working on the project in 2008. He worked between 22.5 and 40 hours per week through December 31, 2012. LK/Forza sold his time at a daily rate of \$1500 or a weekly rate of \$6,000 per week. Mia Scheid worked on the project for 22.5 hours per week from January, 2011 through December, 2012. Ms. Scheid bills at the hourly rate of \$150 per hour.

---

<sup>12</sup> Schedule One

<sup>13</sup> Schedule One

<sup>14</sup> Schedule Seven

<sup>15</sup> Schedule Two

<sup>16</sup> Schedule Three

<sup>17</sup> Schedule Five

Mr. Kemp worked many hours from 2008 through 2012 on the product, its marketing and development. Mr. Kemp has invested \$1,456,875 in his time in the five-year period from January, 2008 through December, 2012. Ms. Scheid has invested \$337,500 of her time during the period from January, 2011 and December 2012. The combined investment of time is equal to \$1,794,375. This is recapped on Schedule One and is based on conversations with Lee Kemp.

### **OPERATING LOSSES**

LK Nutrition had operating losses for 2012, 2013 and 2014 totaling \$595,216.47, plus additional losses of \$80,750.12 from 2011 for total losses of \$675,966.59. These losses include the write off of the unsold product received from Premier. The goods cost \$365,050. Operating losses net of unsalable inventory were \$310,916.59.<sup>18</sup>

### **LEE KEMP EXPENSES**

Lee Kemp has spent \$38,257.70 on travel and related tournament expenses. This includes attending wrestling events, world championships, seminars, conferences and presentation around the world since 2006 in the development and promotion of his nutritional product line.<sup>19</sup>

### **OLYMPIC DEVELOPMENT**

Olympic development costs and Lee Kemp documentary development are broken down as follows:

LK/Forza developed a documentary surrounding Mr. Kemp and his career. It was to premier at the 2012 Olympics in London. When the product was delivered late, mislabelled and found to be tainted, the documentary was not completed. Costs

---

<sup>18</sup> Schedule Seven

<sup>19</sup> Schedule Two

incurred were around \$100,000. In addition, Ms. Scheid incurred \$65,000 in travel expenses related to the product and the London Olympics.

### **EMPLOYMENT COSTS**

Four employees of Fitness Arts spent time on the expansion of LK/Forza. The employees names and percentage of time spent on LK/Forza are attached and total \$86,329.41<sup>20</sup>

### **SALES RECAP**

Fitness Arts had substantial sales of nutritional supplements. These sales provided the basis for the expansion into LK/Forza wrestling products. Sales from various years were taken from the company books and records and are as follows:<sup>21</sup>

2003	\$28,244
2006	\$131,393
2007	\$405,595
2008	\$507,526.00
2010	\$447,493.54
2011	\$503,113.26
2012	\$501,542.38
2013	\$408,929.37
2014	\$362,010.52

In addition, LK Nutrition LLC (F/K/A Forza) had sales as follows:

2012	\$20,820.68
2013	\$77,201.3
2014	\$29,162.22

---

<sup>20</sup> Schedule Five

<sup>21</sup> Schedule Four

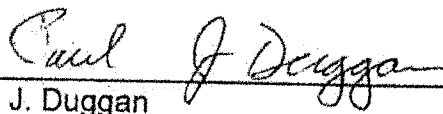
**BALANCE SHEET**

Balance sheet as of December 31, 2014 - See Schedule Six

**COMPARATIVE INCOME STATEMENTS**

Comparative income statements 2011 to 2014 - See Schedule Seven

Dated: March 20, 2015

  
\_\_\_\_\_  
Paul J. Duggan

## **Exhibit A**

PAUL J. DUGGAN

QUALIFICATIONS & DEPOSITION TESTIMONY

2011 - 2014

1. Forza Technologies, LLC, Plaintiff, v. Premier Research Labs, LP, Defendant and Counterclaimant, v. Forza Technologies, LLC, Lee Kemp and Mia Scheid, Counterclaim-Defendants. Deposition testimony.

## **Exhibit B**

### **ANALYZED DOCUMENTS**

1. Deposition of Jennifer Gibson dated May 1, 2014 Pages 86-121
2. Deposition of Timothy David Weesner dated March 26, 2014
3. Deposition of Michael Earl Ripley dated March 20, 2014 and Related Documents including business plan.

## Exhibit C

### PAUL J. DUGGAN CIRRICULUM VITAE

1. President of Jackson Capital Management, LLC – Evergreen Park, IL  
Founded in 1993
  - a. Hedge Fund Management
  - b. Investment Analysis and Valuations
  - c. Small Business Accounting
2. Graduate - Loyola University of Chicago
  - BBA in Accounting
  - CPA – State of Illinois
3. Board of Directors
  - a. Public Companies
    - PS Financial Inc. (PSFI) 3-year term (2000-2003) - Bank Sold
    - Damen National Bank (DFIN) – sold to Mid City National Bank (1998)
    - Cell Pathways, Inc ( CLPA) 2001- 2003- sold to OSI Pharmaceuticals.
  - b. Private Companies
    - Marinette Marine Corporation – sold to The Manitowoc Company (1993-2000)
    - T V Compass, Inc. London, England 2003 to sale
    - Evolve Solutions, Inc. Irvine, California 2003 to sale
    - Epay Systems, Inc. Chicago, Illinois 2008 to present
4. Charitable Boards
  - a. Erin's Handicapped Children's Fund – Chairman
  - b. Brother Rice High School Capital Campaign – Chairman
  - c. Chinese Orphan Relief Fund Board- Beijing China
  - d. Love Without Boundaries – Chairman Emeritus
5. Prior activities
  - a. Founder and Managing Partner Duggan and Associates, LLC 1988 to 2000  
Litigation Support and Technology Transfer Consulting
  - b. Founder and General Partner Duggan & Clesceri, Ltd., CPA's 1976-1988



## Schedule One

### LK Nutrition Lost Hours Recap

Employee	Year	Hours	Value
LK	2008	1,712.50	\$ 256,875.00
LK	2009	2,000.00	\$ 300,000.00
LK	2010	2,000.00	\$ 300,000.00
LK	2011	2,000.00	\$ 300,000.00
LK	2012	2,000.00	\$ 300,000.00
LK	totals	9,712.50	\$ 1,456,875.00

	Hours	Value
Mia S	2008	0.00 \$ -
Mia S	2009	0.00 \$ -
Mia S	2010	0.00 \$ -
Mia S	2011	1125.00 \$ 168,750.00
Mia S	2012	1125.00 \$ 168,750.00
	totals	2250.00 \$ 337,500.00

Combined	11,962.50	\$ 1,794,375.00
----------	-----------	-----------------

### LK Nutrition Cost of PR Labs Product

Date	Check #	Amount
11/22/2011	1005	\$ 150,000.00
4/17/2012	Wire Trans	\$ 215,050.00
Total		\$ 365,050.00

**Schedule Two**

**Lee Kemp  
Forza Expenses  
2008 to 2015**

Lee Kemp FORZA Expenses 2008 - 2015

	Date	Travel	Hotel	Meals	Entertainment	Shipping	TOTAL
<b>2006</b>							
World Team Trials-Las Vegas, NV	Jun-06	400	190	120			
1st Wisconsin Wrestling Alumni Reunion-Madison, WI	Sep-06	145.05	190	60			
World Championships-Guangzhou China	Sep-06						
<b>2007</b>							
World Team Trials-Las Vegas, NV	Jun-07	400	190	120			
Junior World Championships-Beijing, China	Aug-07						
1st Wisconsin Wrestling Alumni Reunion-Madison, WI	Sep-07	143.75	285	60			
<b>2008</b>							
Illinois State Tournament-Champaign	Feb-08	187.45		40			
NCAA Wrestling Championships-St Louis, MO	Mar-08	389.85	285	120			
World Team Trials-Council Bluffs, Iowa	May-08	529	190	120			
Olympic Games-Beijing China	Jul-08						
<b>2009</b>							
Illinois State Tournament	Feb-09	187.45		40			
NCAA Wrestling Championships-St Louis, MO	Mar-09	389.85	285	120			
World Team Trials-Council Bluffs, Iowa	Jun-09	529	190	120			
<b>2010</b>							
Freestyle/Greco US Team Training Camp-Colorado Spring, CO	Jan-10	400	380	120			
Illinois State Tournament	Feb-10	187.45		40			
Expo West (Health Conference)-Anaheim Ca	Mar-10	400	95	30			
NCAA Wrestling Championships-Omaha, NE	Mar-10	400	285	120			
Wrestlers in Business-Cleveland, OH	Dec-10	300		30			
<b>2011</b>							
Illinois State Tournament	Feb-11	187.45		40			
NCAA Wrestling Championships-Philly, PA	Mar-11	400	285	120			
Met with Potential Investor Dan McCabe-New Jersey	May-11	400	95	30			
World Team Trials-Oklahoma City, OK	Jun-11	400	190	60			
Dan McCabe came to Chicago to meet-Chicago (came w/2 other People)	Jun-11			150			
MMA World Expo (Exhibitor and speaker)-New York, NY	Dec-11	400	190	60			
<b>2012</b>							
Supplement 411 Conference-Colorado Springs, CO	Feb-12	400	190	60			
Illinois State Tournament	Feb-12	187.45		40			
NCAA Wrestling Championships-St Louis, MO	Mar-12	389.85	285	120			
NCAA D3 Wrestling Championships-Stevens Point, WI	Mar-12	257.6		30			
Olympic US Wrestling Trials-Iowa City, IA	Apr-12	276	190	60	150	400	
Fox Morning Show Shoot with Scott Cutaneo-New York, NY	May-12	400		60			
Biotic Research Corporation, Rosenberg, TX	Jul-12	400	190	60			
Junior Nationals - Fargo, ND	Jul-12	709.55	285	120		400	
Olympic Games-London England	Jul-12						
New Orleans - State Assn Meeting/Clinic-New Orleans, LA	Oct-12	400	190	60			
Ohio State Coaches Clinic-Columbus, OH	Oct-12	445.05		30			
Northwest Wrestling Coaches Conference Clinic- Pasco, WA	Oct-12	400	190	60		400	
WWCA Clinic-Green Bay, WI	Nov-12	211.6	190	60			
Shooting Foxcatcher Movie-Pittsburg, PA	Dec-12	400	190	60			
<b>2013</b>							
NE Nationals & Cornel vs Harvard Wrestling Dual & Clinic	Jan-13	400	190	60			
MMA World Expo (Exhibitor and Speaker)-New York, NY	Feb-13	400	190	60		800	
Illinois State Tournament	Feb-13	187.45		40			
Damion Logan Event for Autism and Clinic-East Orange, NJ	Mar-13	400	190	60			
NCAA Wrestling Championships-Des Moines, IA	Mar-13	384.1	285	120			
USAW/CLIFF KEEN FOLKSTYLE NATIONALS-Cedar Fall, IA	Apr-13	289.8	190	60			
York College Clinic (Ramon Diaz), York, NE	Apr-13	300		30			
SouthWest Regionals-Dallas, TX	Apr-13	400	190	60			
World University Games Trials-Akron, OH	May-13	456.55	190	60			
NWHOF Induction - Presenter for John Bards-Stillwater, OK	Jun-13	400	190	60			
School Boy National Duals-Indianapolis, IN	Jun-13	246.1	190	60			
Ohio All Star Wrestling Team-Middletown, OH	Jun-13	250	190	60			
US World Team Trials (Present at Silver College)-Stillwater, OK	Jun-13	400	190	60		200	
FORZA Product Shoot	Jul-13						
RALLY4WRESTLING (Met Andy Barth)-Atlanta, GA	Aug-13	400	190	60			
Freak Show Wrestling Tournament (John Azevedo)-Los Angeles, CA	Oct-13	400	190	60			
USAW Fall Coaches Clinic, Colorado Springs, CO	Oct-13	400	190	60			
FILA International Clinic-Las Vegas, NV	Nov-13	400	190	60			

NE Washington Coaches Clinic, Craig Hansen-Pasco, WA	Nov-13	400	190	60
AGON II Wrestling Event-Flint, MI	Dec-13	349.6	190	60
IRON MAN -Cuyahoga Falls, OH	Dec-13	447.35	190	60

**2014**

Liberty Nationals-St Joseph, MO	Feb-14	300	190	60
Dave Schultz Tournament (Indian Wrestlers)-Colorado Springs, CO	Feb-14	400	190	60
Illinois State Tournament	Feb-14	187.45		40
NCAA Wrestling Championships-Oklahoma City, OK	Mar-14	400	285	120
World Team Trials-Madison, WI	May-14	142.6	190	60
Will Johnson Clinic-Miami, FL	Jun-14	400	285	120

**2015**

Illinois State Tournament	Feb-15	187.45		40
NCAA Wrestling Championships-St Louis, MO (Upcoming)	Mar-15	389.85	285	120

**TOTALS**

21,372.70	10,165.00	4,370.00	150.00	2,200.00	38,257.70
-----------	-----------	----------	--------	----------	-----------

0.575 Standard business milage rate

<http://www.irs.gov/uac/Newsroom/New-Standard-Mileage-Rates-Now-Available-Business-Rate-to-Rise-in-2015>

### **Schedule Three**

**Mia Scheid**

**Email Dated 3/11/15**

**Olympic Costs and  
Movie Development**

From: Mia Scheid <miascheid@me.com>  
Date: March 11, 2015 at 4:00:53 AM CDT  
To: Raymond Niro <rpniro@aol.com>, Lee Kemp <lk@leekemp.com>, Fitness Arts  
<info@fitnessarts.org>, "Wartman, Donna L." <wartman@nshn.com>  
Subject: Re: Nutritional Supplement Sales

The documentary was around \$100,000. This was set to premier at the USA House in London 2012 Olympic Games.

Lee should provide you with his travel dates to various venues from 2009-2012.

I spent at least \$50k in travel expenses and additional \$15k to London between 2009-2012.

I spent minimum of 4-5 hours a day m-f (2011-2012) and traveled on many weekends to the OTC, NCAA, Olympic Trials, national meets, dozens of pre Olympic events, WGB events to name a few. Lee should have a better list.

My time is billed out at \$150 per hour minimum. As reflected by drop in sales 2011-2012.

Lee and I started to plan and met with Bob Marshall as early as 2008 to discuss.

Lee spent all of his time on Forza. We spent countless ours on developing PowerPoint presentations for both live and webinar presentations.

I am waiting for wifi as the satellite doesn't work when it's cloudy.

Please let me know if I'm heading in the right direction.

Mia

Sent from my iPhone

On Mar 11, 2015, at 10:54 AM, Raymond Niro <rpniro@aol.com> wrote:

Actually supplement sales were higher: \$447,493 in 2010; \$503,113 in 2011 & \$303,292 & \$362,010 respectively in 2013 & 2014. I still need 2012.

Sent from my iPad

On Mar 10, 2015, at 12:48 PM, Wartman, Donna L <wartman@nshn.com> wrote:

Laura:

Thanks for everything. Ray is still looking for nutritional supplement sales from 2010 through 2013. Mia told him she had as much as \$750,000/year. Is that true? He only sees \$181,000.

Raymond P. Niro  
(Transmitted by Donna L. Wartman)

Dictated but not reviewed

## **Schedule Four**

**Fitness Arts**

**Product Sales Recap**

**Various Years**

**2003 through 2014**

04/04/04

**Fitness Arts Academy**  
**Product Sales / Sales Tax**  
**January through December 2003**

	<u>Amount</u>
Total Product Sales	
Supplements, Gen'l	28,244.48
Fitness Equip., Aids	314.37
Videos, CD's, Manuals	<u>639.78</u>
TOTAL PRODUCT SALES	29,198.63
 Sales Tax	 <u>8.25%</u>
 Total Sales Tax Calculated	 <u><u>2,408.89</u></u>
 Sales Tax Payments	
1st Q 2003	
Payment	814.00
Merchant Fee	14.00
 2nd Q 2003	
Payment	488.00
Merchant Fee	9.00
 3rd Q 2003	
Payment	537.00
Merchant Fee	10.00
 4th Q 2003 (payable)	
Payment	531.00
Merchant Fee	<u>9.00</u>
 Total Sales Tax Payments	 <u><u>2,412.00</u></u>
 Difference	 <u><u>-3.11</u></u>



13/09  
rual Basis

# **Sales Tax Liability** January through December 2006

	Total Sales	Non-Taxable Sales	Taxable Sales	Tax Rate	Tax Collected	Sales Tax Payable As of Dec 31, 06
Illinois Department of Revenue						
Sales Tax	401,101.94	269,708.85	131,393.09	2.25%	11,497.64	987.14
Illinois Department of Revenue - Other	0.00	0.00	0.00		0.00	33.20
Total Illinois Department of Revenue	401,101.94	269,708.85	131,393.09		11,497.64	1,020.34
Misc						
Misc - Other	0.00	0.00	0.00		0.00	0.00
Total Misc	0.00	0.00	0.00		0.00	0.00
No tax vendor						
Other	0.00	0.00	0.00		0.00	0.00
Total (no tax vendor)	0.00	0.00	0.00		0.00	0.00
TOTAL	401,101.94	269,708.85	131,393.09		11,497.64	1,020.34

13/09  
rual Basis

# Sales Tax Liability

January through December 2007

	Total Sales	Non-Taxable Sales	Taxable Sales	Tax Rate	Tax Collected	Sales Tax Payable As of Dec 31, 07
Illinois Department of Revenue						
Sales Tax	712,462.63	306,866.85	405,595.78	2.25%	35,490.30	3,529.47
Illinois Department of Revenue - Other	0.00	0.00	0.00		0.00	0.00
Total Illinois Department of Revenue	712,462.63	306,866.85	405,595.78		35,490.30	3,529.47
Misc						
Misc - Other	0.00	0.00	0.00		0.00	0.00
Total Misc	0.00	0.00	0.00		0.00	0.00
No tax vendor						
Other	0.00	0.00	0.00		0.00	0.00
Total (no tax vendor)	0.00	0.00	0.00		0.00	0.00
TOTAL	712,462.63	306,866.85	405,595.78		35,490.30	3,529.47

# Sales Tax Liability January through December 2008

	Total Sales	Non-Taxable Sales	Taxable Sales	Tax Rate	Tax Collected	Sales Tax Payable As of Dec 31, 08
Illinois Department of Revenue						
Sales Tax	759,654.67	252,128.11	507,526.56	2.25%	47,578.75	39,126.74
Illinois Department of Revenue - Other	0.00	0.00	0.00		0.00	0.00
Total Illinois Department of Revenue	759,654.67	252,128.11	507,526.56		47,578.75	39,126.74
Misc						
Misc - Other	0.00	0.00	0.00		0.00	0.00
Total Misc	0.00	0.00	0.00		0.00	0.00
No tax vendor						
Other	0.00	0.00	0.00		0.00	0.00
Total (no tax vendor)	0.00	0.00	0.00		0.00	0.00
TOTAL	759,654.67	252,128.11	507,526.56		47,578.75	39,126.74

3/5/2015  
6:25 PM

# Fitness Arts Department Sales Summary

Date: 3/1/2010 12:00:00 AM to 12/31/2010 11:59:59 PM

Dept Name	Qty Sold	Ext Price	Ext Cost	Margin %
PRLabs	20,433	447,493.54	272,739.09	39.05
Fitness Arts	847	31,383.93	16,945.92	46
System	673	5,281.45	4,387.20	16.93
QuickBooks Financial Software	205	11,668.44	2,581.19	77.88
SacroWedgy	4	119.8	48	59.93
Service	1,044	111,986.48	7.1	99.99
	<u>23,206</u>	<u>607,933.65</u>	<u>296,708.50</u>	<u>51.19</u>

This is the separate report submitted

3/5/2015  
6:21 PM

**Fitness Arts  
Department Sales Summary**

Date: 1/1/2011 12:00:00 AM to 12/31/2011 11:59:59 PM

Dept Name	Qty Sold	Ext Price	Ext Cost	Margin %
PR Labs	26,473	503,113.26	345,470.55	31.33
Fitness Arts	1,829.75	59,348.19	13,125.08	77.88
System	766	7,199.40	3,224.09	55.22
Service	945.25	100,584.68	79.96	99.92
SacroWedgy	4	119.8	68.88	42.5
	<u>30,018</u>	<u>670,365.34</u>	<u>361,968.56</u>	<u>46</u>

Jan-12	Category	Subtotal	Tax	Total
	Food	\$42,352.67	\$914.65	\$43,267.32
	Non-Food	\$1,570.87	\$149.34	\$1,720.21 ✓
Feb-12	Food	\$43,553.83	\$977.02	\$44,530.85
	Non-Food	\$1,500.45	\$137.80	\$1,638.25 ✓
Mar-12	Food	\$41,238.50	\$901.72	\$42,140.22
	Non-Food	\$1,778.61	\$150.21	\$1,928.82 ✓
Apr-12	Food	\$43,075.34	\$956.59	\$44,031.93
	Non-Food	\$1,406.41	\$128.68	\$1,535.09 ✓
May-12	Food	\$43,169.28	\$963.96	\$44,133.24
	Non-Food	\$1,463.43	\$131.84	\$1,595.27
Jun-12	Food	\$46,164.30	\$1,029.85	\$47,194.15
	Non-Food	\$2,749.40	\$251.51	\$3,000.91 ✓
Jul-12	Food	\$36,194.16	\$794.98	\$36,989.14
	Non-Food	\$1,359.97	\$124.38	\$1,484.35 ✓
Aug. 2012	Food	\$42,229.34	\$959.55	\$43,188.89
	Non-Food	\$2,055.39	\$188.71	\$2,244.10 ✓
Sept. 2012	Food	\$39,491.65	\$877.36	\$40,369.01
	Non-Food	\$1,260.59	\$111.10	\$1,371.69 ✓
Oct. 2012	Food	\$40,937.87	\$910.54	\$41,848.41
	Non-Food	\$980.78	\$86.46	\$1,067.24 ✓
Nov. 2012	Food	\$36,764.42	\$827.79	\$37,592.21
	Non-Food	\$973.04	\$88.59	\$1,061.63
Dec. 2012	Food	\$35,453.09	\$803.92	\$36,257.01
	Non-Food	\$691.59	\$59.06	\$750.65

**\$520,940.59**

\*Food - Supplement

\*Non-Food - Product sold - Non Digestable.

Jan-13 Category	Subtotal	Tax	Total
Food	\$39,563.10	\$868.42	\$40,431.52
Non-Food	\$988.08	\$87.80	\$1,075.88
Feb-13 Food	\$28,679.82	\$650.60	\$29,330.42
Non-Food	\$730.88	\$65.16	\$796.04
Mar-13 Food	\$34,992.78	\$782.24	\$35,775.02
Non-Food	\$699.11	\$60.33	\$759.44

\$108,168.32

3/10/2015  
4:28 PM

Fitness Arts  
Department Sales Summary

Product Sales April 2013-December 2013

Date: 4/1/2013 12:00:00 AM to 12/31/2013 11:59:59 PM

Department	Qty Sold	Ext Price	Ext Cost
Food	13,805	303,392.41	192,711.99
Non-Food	524	10,029.38	6,633.89
	<u>14,329</u>	<u>313,421.79</u>	<u>199,345.88</u>



3/5/2015  
6:14 PM

# Fitness Arts Department Sales Summary

Date: 1/1/2014 12:00:00 AM to 12/31/2014 11:59:59 PM

Department	Qty Sold	Ext Price	Ext Cost	Margin %
Food	15,314	362,010.52	223,065.26	38.38
Non-Food	727	16,380.07	12,959.70	20.88
Rental	89	3,560.00	0	100
Service	1,430	131,353.50	0	100
Shipping	299	3,256.07	0	100
	<u>17,859</u>	<u>516,560.16</u>	<u>236,024.96</u>	<u>54.31</u>

## **Schedule Five**

**Fitness Arts  
Employment Costs  
spent on LK / Forza  
2011-2014**

2011				% of time -Forza	Total \$ - Forza
	Keith Bardin		1,811.00	90	1,629.90
	Cheyenne Johnson		-		
	Laura Manna		20,387.91		
	Elizabeth Miner		25,986.96		
2012					
	Keith Bardin		21,600.06	90	19,440.54
	Cheyenne Johnson		10,775.00	90	9,697.50
	Laura Manna		29,411.25	40	11,764.50
	Elizabeth Miner		19,608.60	30	5,882.40
2013					
	Keith Bardin				
	Cheyenne Johnson				
	Laura Manna		40,216.25	40	16,086.50
	Elizabeth Miner		35,022.72	30	10,506.81
2014					
	Keith Bardin				
	Cheyenne Johnson				
	Laura Manna		44,484.53	20	8,896.91
	Elizabeth Miner		24,243.45	10	2,424.35

**SCHEDULE SIX**

**BALANCE SHEET**

**December 31, 2014**

**FORZA TECHNOLOGIES LLC**  
**Balance Sheet**  
As of December 31, 2014

Accrual Basis

	Dec 31, 14
<b>ASSETS</b>	
<b>Current Assets</b>	
Checking/Savings	
1010 - Cornerstone NB & T 0116	6,326
1015 - Northern Trust Checking	13,806
Total Checking/Savings	20,131
Other Current Assets	
1115 - Payroll Exchange Account	0
1300 - Inventory	
1302 - Product Inventory - Biotics	6,042
1303 - Inventory Storage & Logistics	15,414
1304 - Fulfillment Expenses	6,913
1305 - Other Inventory Costs	932
Total 1300 - Inventory	29,301
Total Other Current Assets	29,301
Total Current Assets	49,433
<b>Fixed Assets</b>	
1600 - Fixed Assets	
1670 - Computer Equipment	189
1680 - Computer Software	357
Total 1600 - Fixed Assets	546
1661 - Accumulated Depreciation	(128)
Total Fixed Assets	418
<b>Other Assets</b>	
1700 - Intangible Assets	
1701 - Organization Costs	780
1702 - Start Up Expenses	64,149
1703 - Loan Fees	500
Total 1700 - Intangible Assets	65,429
1771 - Accumulated Amortization	(8,700)
Total Other Assets	56,729
<b>TOTAL ASSETS</b>	<b>106,580</b>
<b>LIABILITIES &amp; EQUITY</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	
Accounts Payable	
2000 - Accounts Payable	2,526
Total Accounts Payable	2,526
Credit Cards	
2020 - Amex Credit Card	63
Total Credit Cards	63
Other Current Liabilities	
2100 - Accrued Payroll Taxes	39
2205 - Reimbursement Payable - Scheid	28,088
2206 - Due to Fitness Arts	26,325
2301 - Loan Payable - Passignano	550,000
2302 - Line of credit - Northern Trust	100,000
Total Other Current Liabilities	703,053
Total Current Liabilities	705,641
Total Liabilities	705,641
<b>Equity</b>	
30700 - Owners Distributions	
Mia Scheid	(8,587)

MANAGEMENT PURPOSES ONLY

DRAFT

**FORZA TECHNOLOGIES LLC**  
**Balance Sheet**  
As of December 31, 2014

Accrual Basis

	Dec 31, 14
Total 30700 - Owners Distributions	(8,587)
3100 - Owners Capital	
Lee Kemp	(8,587)
Mia Scheld	13,329
Total 3100 - Owners Capital	4,742
3200 - Owners Equity	(293,498)
Net Income	(301,718)
Total Equity	(599,061)
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b><u>108,580</u></b>

**DRAFT**

**SCHEDULE SEVEN**

**COMPARATIVE INCOME STATEMENTS  
2011 TO 2014**

LK Nutrition LLC (f/k/a Forza Technologies LLC)  
Comparative Income Statements  
2011 to 2014

	2011	2012	2013	2014	Total
Total Income		\$ 21,468.62	\$ 87,478.84	\$ 29,090.00	\$ 138,037.46
Cost of Goods Sold		22,535.39	61,384.05	309,616.00	\$ 393,535.44
Gross Profit		(1,066.77)	26,094.79	(280,526.00)	\$ (255,497.98)
Total Expenses	80,750.12	186,594.77	131,931.72	21,192.00	\$ 420,468.61
Net Losses	<u>(80,750.12)</u>	<u>(187,661.54)</u>	<u>(105,836.93)</u>	<u>(301,718.00)</u>	<u>\$ (675,966.59)</u>
Net Losses from Purchased Inventory					\$ (365,050.00)
Net Losses from Operations					\$ (310,916.59)
Total Net Losses					<u>\$ (675,966.59)</u>



**FORZA TECHNOLOGIES LLC**  
**Profit & Loss**  
January through December 2014

Accrual Basis

	Jan - Dec 14
Ordinary Income/Expense	
Income	
4000 - Ordinary Income	
4100 - Merchandise Sales	29,166
4110 - Misc. Income	(76)
Total 4000 - Ordinary Income	29,090
Total Income	29,090
Cost of Goods Sold	
6000 - Cost of Goods Sold	
6100 - COGS-P/R Labs - damaged inv.	290,620
6110 - COGS - Biotics	17,110
6300 - COGS-Shipping	1,887
Total 6000 - Cost of Goods Sold	309,616
Total COGS	309,616
Gross Profit	(280,526)
Expense	
7200 - Payroll Expenses	
7201 - Officer's Wages	6,550
7230 - Payroll Taxes	726
Total 7200 - Payroll Expenses	7,276
7500 - Professional Fees	
7520 - Accounting Fees	2,159
Total 7500 - Professional Fees	2,159
8100 - Operational Expenses	
8105 - Advertising and Promotion	874
8110 - Automobile Expense	75
8115 - Bank and Credit Card Fees	316
8116 - Credit Card Processing Fees	1,464
8150 - Gifts	97
8160 - Interest	3,565
8170 - Office Supplies	26
8180 - Rent Expense	3,772
8193 - Telephone Expense	562
8194 - Internet Expense	180
Total 8100 - Operational Expenses	10,931
8300 - Travel and Meeting Expenses	
8321 - Parking and Tolls	76
Total 8300 - Travel and Meeting Expenses	76
8500 - Business Expenses	
8585 - Taxes and Licenses	250
8590 - Other Expense	500
Total 8500 - Business Expenses	750
Total Expense	21,192
Net Ordinary Income	(301,718)
Net Income	(301,718)

DRAFT

# LK Nutrition LLC (f/k/a Forza)

## Historical P&L

January 2012 through December 2014

Accrual Basis

### Ordinary Income/Expense

#### Income

#### 4000 Ordinary Income

4100 Merchandise Sales

4101 Merchandise Sales - Supply

4105 Shipping Income

4110 Misc. Income

Total 4000 Ordinary Income

Total Income

#### Cost of Goods Sold

6000 Cost of Goods Sold

6100 COGS-P/R Labs

6110 COGS - Biotics

6200 COGS-Other

6300 COGS-Shipping

Total 6000 Cost of Goods Sold

Total COGS

Gross Profit

#### Expense

7000 Supplies

7200 Payroll Expenses

7201 Officer's Wages

7210 Wages

7230 Payroll Taxes

Total 7200 Payroll Expenses

7500 Professional Fees

7510 Consulting Fees

7520 Accounting Fees

7530 Legal Fees

Total 7500 Professional Fees

8100 Operational Expenses

8103 Amortization

8105 Advertising and Promotion

8110 Automobile Expense

8110.1 Parking and Tolls

8110.2 Automobile Expense - Other

Total 8110 Automobile Expense

8114 Reconciliation Discrepancies

8115 Bank and Credit Card Fees

8116 Credit Card Processing Fees

Jan - Dec 12

Jan - Dec 13

10,820.68

684.78

0.00

63.16

21,468.62

21,468.62

20,719.00

0.00

1,337.80

978.49

22,535.39

22,535.39

-1,066.77

664.74

52,000.00

0.00

4,088.00

56,060.00

3,572.00

3,259.00

4,687.75

11,510.35

4,329.00

17,330.86

0.00

2,204.37

2,294.37

0.00

230.90

1,643.22

77,201.30

788.42

842.12

3,500.00

81,131.84

81,131.84

30,342.37

24,231.70

2,480.72

4,329.26

61,384.05

61,384.05

19,747.79

0.00

45,159.60

18,750.02

5,475.71

70,385.33

63.95

6,820.00

62.58

6,846.51

4,371.25

8,361.50

100.71

272.44

373.15

-800.00

226.30

2,454.98

MANAGEMENT PURPOSES ONLY

Accrual Basis

LK Nutrition LLC (f/k/a Forza)  
Historical P&L

January 2012 through December 2014

	Jan - Dec 12	Jan - Dec 13
8125 - Commissions	391.47	0.00
8130 - Computer Supplies/Support	4,373.80	0.00
8140 - Donation	1,253.00	0.00
8150 - Gifts	1,563.00	0.00
8152 - Depreciation	34.40	90.00
8160 - Interest	0.00	1,098.79
8165 - Miscellaneous	439.64	488.61
8170 - Office Supplies	167.62	195.54
8175 - Postage	187.08	68.37
8176 - Printing and Copying	762.34	1,698.48
8177 - Printing and Packaging	0.00	0.00
8180 - Rent Expense	0.00	3,805.00
8190 - Sponsorship	37,500.00	25,000.00
8193 - Telephone Expense	937.99	508.11
8194 - Internet Expense	152.62	466.22
<b>Total 8100 - Operational Expenses</b>	<b>93,568.45</b>	<b>47,807.00</b>
8240 - Travel and Meeting Expenses		
8210 - Conference, Convention, Class	580.00	0.00
8215 - Hotel & Lodging	0.00	220.69
8220 - Airfare & Transportation	6,512.91	3,727.33
8221 - Parking and Tolls	320.25	184.00
8230 - Meals & Entertainment	3,293.18	258.59
8260 - Travel and Meeting Expenses - Other	13,524.99	1,480.97
<b>Total 8200 - Travel and Meeting Expenses</b>	<b>24,331.23</b>	<b>5,610.98</b>
8300 - Business Expenses		
8310 - Insurance - Liability	284.00	346.00
8365 - Taxes and Licenses	150.00	538.00
8390 - Other Expense	0.00	0.00
<b>Total 8300 - Business Expenses</b>	<b>434.00</b>	<b>882.00</b>
<b>Total Expense</b>	<b>128,334.77</b>	<b>131,931.72</b>
<b>Net Ordinary Income</b>	<b>-187,851.54</b>	<b>-112,163.93</b>
<b>Other Income/Expense</b>		
Other Income		
9001 - Legal Settlement	0.00	6,347.00
<b>Total Other Income</b>	<b>0.00</b>	<b>6,347.00</b>
Other Expense		
9200 - Documentary Project Expenses	-615.20	0.00
9201 - Ghost and Goblins start up	615.20	0.00
<b>Total Other Expense</b>	<b>0.00</b>	<b>0.00</b>
<b>Net Other Income</b>	<b>0.00</b>	<b>6,347.00</b>
<b>MANAGEMENT PURPOSES ONLY</b>		

Accrual Basis

LK Nutrition LLC (f/k/a Forza)  
Historical P&L  
January 2012 through December 2014

Net Income

Jan - Dec 12

Jan - Dec 13

-187,661.54

-105,836.93

MANAGEMENT PURPOSES ONLY

1:59 PM  
03/05/15

**FORZA TECHNOLOGIES LLC**  
**Journal**  
**December 31, 2011**

Date	Num	Name	Memo	Account	Debit	Credit
12/31/2011	XFER	Fitness Arts Transfer		Mia Scheid		1,000.00
		Fitness Arts Transfer		7520 - Accounting Fees	208.75	
		Fitness Arts Transfer		1701 - Organization Costs	779.81	
		Fitness Arts Transfer		8170 - Office Supplies	1,249.40	
		Fitness Arts Transfer		8130 - Computer Supplies/Support	318.44	
		Fitness Arts Transfer		8176 - Printing and Copying	983.01	
		Fitness Arts Transfer		8182 - Security	212.30	
		Fitness Arts Transfer		8180 - Rent Expense	3,909.86	
		Fitness Arts Transfer		8181 - Repairs and Maintenance	414.63	
		Fitness Arts Transfer		8120 - Cleaning Expense	584.92	
		Fitness Arts Transfer		8320 - Airfare & Transportation	7,939.60	
		Fitness Arts Transfer		2205 - Reimbursement Payable - Scheid		15,600.72
					15,600.72	15,600.72
12/31/2011	AJE 1 JM	To record 2011 start up costs		1702 - Start Up Expenses	64,149.40	
		To record 2011 start up costs		8510 - Insurance - Liability		401.00
		To record 2011 start up costs		7300 - Independent Contractors		13,000.00
		To record 2011 start up costs		8105 - Advertising and Promotion		5,046.70
		To record 2011 start up costs		8120 - Cleaning Expense		584.92
		To record 2011 start up costs		8130 - Computer Supplies/Support		318.44
		To record 2011 start up costs		8150 - Gifts		357.99
		To record 2011 start up costs		8170 - Office Supplies		1,477.51
		To record 2011 start up costs		8176 - Printing and Copying		983.01
		To record 2011 start up costs		8180 - Rent Expense		3,909.86
		To record 2011 start up costs		8181 - Repairs and Maintenance		414.63
		To record 2011 start up costs		8182 - Security		212.30
		To record 2011 start up costs		8190 - Sponsorship		25,000.00
		To record 2011 start up costs		7520 - Accounting Fees		208.75
		To record 2011 start up costs		7510 - Consulting Fees		1,600.00
		To record 2011 start up costs		8330 - Meals & Entertainment		177.66
		To record 2011 start up costs		8320 - Airfare & Transportation		10,456.63
					64,149.40	64,149.40
TOTAL					80,750.12	80,750.12

EXHIBIT

C

**In The Matter Of:**  
*Forza Technologies v*  
*Premier Research Labs*

---

*Michael Earl Ripley - CONFIDENTIAL*  
*March 20, 2014*

---

*Griffin & Associates Court Reporters*  
*2398 E. Camelback Road, Suite 260 Phoenix, AZ 85016*  
*www.arizonacourtreporters.com*  
*602.264.2230*

Original File mr032014.TXT

Win-U-Script® with Word Index

<p style="text-align: right;">Page 65</p> <p>1] synopsis, correct?</p> <p>2] A. Correct.</p> <p>3] Q. And the message is, "Mia, we should talk before</p> <p>4] you present to your investor"?</p> <p>5] A. Yes.</p> <p>6] Q. And this document was for purposes of</p> <p>7] presenting to an investor, correct?</p> <p>8] A. If this was with this, yes.</p> <p>9] Q. At this point, did FORZA have any investors --</p> <p>10] A. I don't --</p> <p>11] Q. -- in their business?</p> <p>12] A. I don't know.</p> <p>13] Q. And when you wrote to Mia, "Mia, we should talk</p> <p>14] before you present to your investor," were you talking</p> <p>15] about a specific person?</p> <p>16] A. No.</p> <p>17] Q. This was in general?</p> <p>18] A. I didn't know who she was talking to.</p> <p>19] Q. Was this in preparation for a meeting that Mia</p> <p>20] was going to?</p> <p>21] A. Yes.</p> <p>22] Q. So she was going to meet with an investor, and</p> <p>23] this was in preparation --</p> <p>24] MR. NIRO: Objection; leading.</p> <p>25] THE WITNESS: I don't know if she was going to</p>	<p style="text-align: right;">Page 67</p> <p>1] A. These are referring to the sections of a</p> <p>2] business plan that I referred to earlier where you</p> <p>3] usually state things like the goal, the market, the</p> <p>4] products, the market strategy, and the competition.</p> <p>5] Q. In the initial market, there is a number of</p> <p>6] "180,000 wrestlers, coaches &amp; wrestling parents</p> <p>7] registered as members of the United States American</p> <p>8] Wrestling Association."</p> <p>9] Did I read that correctly?</p> <p>10] A. Yes.</p> <p>11] Q. Does that presume every member of the USAWA?</p> <p>12] A. I don't know. That was what was in their</p> <p>13] database.</p> <p>14] Q. I'm sorry?</p> <p>15] A. That was their database of people.</p> <p>16] Q. One hundred and eighty --</p> <p>17] A. Yes.</p> <p>18] Q. -- thousand?</p> <p>19] Where did you get that number from?</p> <p>20] A. I got that number from Lee Kemp.</p> <p>21] Q. Did you ever do any research into determining</p> <p>22] if that number was accurate?</p> <p>23] A. Yes. I got the -- I got a summary of the</p> <p>24] database at some point during this engagement.</p> <p>25] Q. What do you mean by "summary"?</p>
<p style="text-align: right;">Page 66</p> <p>1] be -- she asked: I need to have this document for an</p> <p>2] investor.</p> <p>3] I sent her a document and said, we should talk</p> <p>4] before you present to the investor.</p> <p>5] I don't know if the meeting was imminent or</p> <p>6] not.</p> <p>7] Q. BY MS. ALIKHAN: And you don't know who she met</p> <p>8] with, correct?</p> <p>9] A. No.</p> <p>10] Q. If you go to the second page, 009790 --</p> <p>11] A. Yes.</p> <p>12] Q. -- the top, this is the FORZA Business Plan</p> <p>13] Synopsis, correct?</p> <p>14] A. Is it the complete synopsis? I don't know.</p> <p>15] Q. At the top of the document it says, "Business</p> <p>16] Plan Synopsis," correct?</p> <p>17] A. It says page 1.</p> <p>18] Q. At the top of the document?</p> <p>19] A. It says -- yes, it's a -- it's page 1 of a</p> <p>20] Business Plan Synopsis.</p> <p>21] Q. Correct. And it says, "Draft - Confidential,"</p> <p>22] correct?</p> <p>23] A. Yes.</p> <p>24] Q. Can you walk me through this document and tell</p> <p>25] me about the different sections?</p>	<p style="text-align: right;">Page 68</p> <p>1] A. Well, they tell you how many wrestlers they --</p> <p>2] they have at each club and where they're located, things</p> <p>3] like that, and totals. We used those totals as part of</p> <p>4] the numbers of this document.</p> <p>5] Q. Were you ever given specific names and</p> <p>6] locations of individuals?</p> <p>7] A. Yes, only to the extent I think coaches were</p> <p>8] listed, coaches' names were listed. Individual</p> <p>9] wrestlers I think are in that database, but I didn't</p> <p>10] look at them. They may have been in that database. I</p> <p>11] didn't look at them.</p> <p>12] Q. And under the Product section --</p> <p>13] A. Yes.</p> <p>14] Q. -- it looks like there's five different</p> <p>15] products that FORZA was intending to roll out, correct?</p> <p>16] A. Yes.</p> <p>17] Q. At this point, there was no product made,</p> <p>18] correct?</p> <p>19] A. No finished product, correct. I don't know if</p> <p>20] they had samples or nonpackaged product. I really don't</p> <p>21] know.</p> <p>22] Q. Were you aware of any beta testing of their</p> <p>23] product or trial testing?</p> <p>24] A. No, only anecdotally that the products were</p> <p>25] good for wrestlers.</p>



Page 73

1] what the second sentence says: They guaranteed sole  
2] access and sponsorship to FORZA in the area of nutrition  
3] and wellness. So they did not have a competitor in  
4] nutritional supplements that was going to be able to  
5] access the wrestling community using USA's sponsorship.  
6] In the general marketplace, they have competitors.  
7] Q. And where did that information come from as to  
8] who their competitors were in the general marketplace?  
9] A. That came from -- that came from Lee Kemp and  
10] Mia and our own knowledge of -- of -- as consumers of  
11] potential competitors. It was not a -- we did not do a  
12] competitor research in the general market because that  
13] wasn't the focus of the company.  
14] Q. Did you do any research with respect to the  
15] nutritional supplement market with respect to  
16] competitors?  
17] A. No, we did not -- I did not, no. I don't know  
18] if they did or not.  
19] Q. Did -- so you don't have any recollection as to  
20] whether or not they did, correct?  
21] A. I don't know, no.  
22] Q. You don't know.  
23] And they obviously didn't provide you any  
24] documentation --  
25] A. No.

Page 74

1] Q. -- to that effect?  
2] A. No.  
3] Q. Are you familiar with NCIS codes or SIC codes?  
4] A. Yes.  
5] Q. What is your understanding of those?  
6] A. Those are business codes that help identify  
7] what businesses these companies are in. I don't know  
8] about NCIS. I don't recall that, but S -- S codes are.  
9] Q. And did you use the SIC codes in comparing any  
10] competitors with respect to --  
11] A. No.  
12] Q. You can go to page 2, please, of that same  
13] document.  
14] A. I'm sorry. I only have one page. That's why I  
15] was asking that question before.  
16] MS. ALIKHAN: Let's go off the record real  
17] quick.  
18] (Discussion off the record.)  
19] Q. BY MS. ALIKHAN: We're back on.  
20] The second page, which is FORZA 009791 --  
21] A. Correct.  
22] Q. -- can you talk to me about the margin section  
23] of this document?  
24] A. For the company to be profitable, the margins  
25] generally have to be -- of distribution companies need

Page 75

1] to be somewhere in that range, and they can be less, but  
2] due to, as I said, in -- or they said in the document,  
3] the wrestling community is a closed community, so you  
4] should be able to charge them more for your products.  
5] Q. And in this section you believed or you  
6] recommended that the margins --  
7] A. That was what was estimated. We used that as  
8] a -- for estimating -- for my estimating criteria within  
9] the rest of the document. We were just pulling that  
10] number out.  
11] Q. 75 to 100 percent per sale?  
12] A. Percent per sale, uh-huh.  
13] Q. And was any research conducted with respect to  
14] those margins in other distribution companies?  
15] A. Independent research, I don't know. We -- when  
16] we talked to some of the focus groups, we did test  
17] whether or not the sales of a product would be too  
18] expensive for them, and they indicated that they didn't  
19] think it would be too expensive.  
20] Q. What price point were you presenting to them?  
21] A. I don't recall. It would have been some part  
22] of that 75 to 100 percent above what the cost of the  
23] product was going to be.  
24] Q. And this was based on the two focus groups that  
25] were conducted?

Page 76

1] A. Yes, and might have been through some of Lee's  
2] research as well. I don't ...  
3] Q. But you specifically didn't do any research  
4] with respect to the profit margins or the gross margins  
5] in this section?  
6] A. No.  
7] Q. Where did the information for the sales  
8] strategy come from?  
9] A. That was -- that came through discussions  
10] between myself and the -- and the two participants, Mia  
11] Scheid and Lee Kemp.  
12] Q. Did you consult with respect to the sales  
13] strategy as well?  
14] A. As it relates to this document, I did, yes.  
15] Q. In preparing these -- these documents, these  
16] business plan prospectives, is it, in your experience,  
17] your expectation that a company utilize the sale  
18] strategy that you recommend or that you write for them?  
19] MR. NIRO: Objection; calls for speculation;  
20] compound; uses the word "or."  
21] Which question are you asking?  
22] Q. BY MS. ALIKHAN: Do you understand the  
23] question?  
24] A. You need to rephrase that question.  
25] Q. In your experience, do you have any expectation

Page 77

1] that the company will utilize the sale strategy that you  
2] write for them?  
3] A. No.  
4] Q. Why is that?  
5] A. Because unless they ask us to help implement  
6] that, the company can use whatever strategy they choose  
7] to use.  
8] Q. So explain to me what the purpose of this  
9] section is in the business plan prospectus.  
10] A. As the whole document is set up, it's -- it's  
11] designed to give a potential investor some indication of  
12] what the company's thoughts are relative to its business  
13] operation. It's not a -- not meant to be anything more  
14] than that.  
15] The sales strategy is just that; it's a  
16] strategy. It's not necessarily an operational plan.  
17] Q. So in your experience, the sales strategy can  
18] change --  
19] A. Yes.  
20] Q. -- with respect to the implementation?  
21] A. Sorry. Yes.  
22] Q. And in your experience, is that commonplace?  
23] A. Yes, it is -- but -- but it can also not be. I  
24] mean, it can be both. They can use parts of it. They  
25] can go their own way or they cannot use any of it.

Page 78

1] MR. NIRO: Objection; speculation;  
2] hypothetical.  
3] Q. BY MS. ALIKHAN: Let's talk about the sales  
4] forecast. Can you talk to me about how you were able to  
5] arrive at these numbers for each of the three sections  
6] in year one? So we have sales to wrestling clubs, 8 to  
7] 14. Can you --  
8] A. I can only speak to the process. I don't  
9] recall any specifics about this other than what I'm  
10] reading, correct? Right now I can speculate -- or not  
11] speculate. I can say that the process we used was to  
12] use a -- a conservative number of clubs and multiply it  
13] times a certain number of members per club and calculate  
14] what the dollars might be generated from that sale.  
15] Q. So the number assumes that each person within  
16] that club is purchasing at a particular rate, correct?  
17] A. Yes. And that's in the other document that you  
18] don't have in front of me.  
19] Q. Well, let's just stick to this one.  
20] A. In this one it isn't listed but, yes, that's  
21] what -- there are a number of people per club, number of  
22] people that might buy from that club, and a monthly  
23] sales amount to that particular wrestler, I think are  
24] the three major multipliers.  
25] Q. Does it account for any type of return or

Page 79

1] refund?  
2] A. Of what?  
3] Q. The product.  
4] A. Return or refund of the product? I don't think  
5] the sales do, no.  
6] Q. Was any research done to test the numbers with  
7] respect to these sales forecasts?  
8] A. No.  
9] Q. No comparing of ratios with other distributing  
10] companies?  
11] A. No.  
12] Q. Any research into the sales of other  
13] distributing companies and what their sales numbers  
14] were?  
15] A. There are all sorts of different distributing  
16] companies. It would not be a fair comparison.  
17] Q. Sports nutrition distributing company?  
18] A. No.  
19] Q. There was none done?  
20] A. No.  
21] Q. What was considered year one?  
22] A. Year one was 12 months after the startup of a  
23] company.  
24] Q. When was that?  
25] A. I don't know. At the time it would -- it was

Page 80

1] anticipated from when the business plan would start to  
2] be executed. I don't know -- you know, there was no  
3] timetable for starting.  
4] Q. And was the same process used in calculating  
5] the numbers for year two?  
6] A. Yes.  
7] Q. And I'm just going to assume for efficiency  
8] sake that the same -- no research was done with respect  
9] to these numbers in comparing -- pardon me -- comparing  
10] other distribution companies' sports nutrition?  
11] A. Correct.  
12] Q. Same goes for year three, same process?  
13] A. Yes, correct.  
14] Q. Same answer with respect to the research?  
15] A. Yes.  
16] Q. If we can turn to the next page, FORZA009792  
17] and the Expense Forecast, how were you able to calculate  
18] the product costs or where did you get that information?  
19] A. It's in the other document, but it's based on  
20] the costs -- the estimated cost of producing the product  
21] times the number of sales units sold.  
22] Q. Where were you able to get the production  
23] costs --  
24] A. I was --  
25] Q. -- of the product?

Page 97	Page 99
<p>1] business plan prospectus and business plan synopsis this 2] is? 3] A. No, I cannot. It's not the final product, I 4] can say that. 5] Q. Okay. I'd like to direct your attention to 6] FORZA009844. 7] A. Okay. 8] Q. It's the second page. 9] A. Uh-huh. 10] Q. At the top it has a date of September 1st, 11] 2011. 12] A. Yes. 13] Q. Does that give you any indication as to when 14] this was drafted? 15] A. I would say it was sometime within that week. 16] Q. So would it be safe to say that -- can we call 17] this a September 1st, 2011 version? Is that fair? 18] A. If you wish. 19] Q. I'm just trying to get a handle as to how many 20] versions there are -- 21] A. I don't know how many versions there are. 22] Q. -- and which one is the final. 23] A. Final, correct. What I sent you is my 24] considered final. That's the one I had on my system. 25] Q. We'll get to your documents in a second, but</p>	<p>1] came to these -- or these numbers and the process would 2] be the same? 3] A. Correct. 4] Q. And the same goes for any type of research you 5] did with respect to these numbers, correct? 6] A. Correct. 7] Q. I'd like to direct you to FORZA009857. It's 8] page 14 of that document. The next page. 9] A. Okay. 10] Q. It says "Sales Team." 11] A. Uh-huh. 12] Q. And under it you have listed Lee Kemp, correct? 13] A. Correct. 14] Q. And contract sales reps? 15] A. Correct. 16] Q. Do you know if at any point FORZA contracted 17] sales reps for -- 18] A. I do not know. 19] Q. Okay. But as part of your business plan, that 20] was something you suggested, correct? 21] A. As part -- I don't know if the suggestion came 22] from me, from them, but yes, it's what we agreed to put 23] in here. 24] Q. You don't recall where that information came 25] from with respect to the contract sales reps will be</p>
Page 98	Page 100
<p>1] there was more than two versions from what I saw in the 2] documentation. 3] A. I believe there were, yes. 4] Q. So that's why I have to question you as to 5] which one is the final. 6] A. Well, I sent you the -- I did send you the 7] final. 8] Q. Okay. Well, maybe throughout -- 9] A. Okay. 10] Q. -- these documents, maybe I'll show you a 11] version -- 12] A. Okay. 13] Q. -- that is the final. 14] A. Okay. 15] Q. Now, a lot of what we just discussed is 16] obviously in this document, correct? 17] A. Correct. 18] Q. And with respect to FORZA009856, page 13 -- 19] A. Okay. 20] Q. -- these are the same numbers that we just 21] discussed in Defendant's Exhibit 8; is that correct? 22] A. I'll have to compare them. 23] Q. Go ahead. 24] A. Okay. Correct. 25] Q. And so all your answers with respect to how you</p>	<p>1] used to target high-volume wrestlers? 2] A. I certainly might have suggested it. I'm 3] not -- as I said, this is two and a half years ago. 4] Q. Sure. 5] A. I don't remember exactly. But yes, I may well 6] have suggested it. 7] Q. Okay. And don't worry. I'm not here to, like, 8] trip you up. 9] A. Okay. I understand. I just want to make sure 10] I'm clear. 11] Q. Yeah, that's fine. 12] A. I don't want you to ... 13] Q. And I'd like to direct your attention to 14] FORZA009863. It's page 3 of the business plan synopsis. 15] A. Okay. 16] Q. Are those the same numbers we saw in the 17] Defendant's Exhibit 8 as the year expense -- three-year 18] expense forecast? 19] A. Can you give me a second? 20] Q. Yes, sure. Take your time. 21] A. What would that number have been? 22] Q. Defendant's Exhibit 8. That page is 009792. 23] A. I'm sorry. 24] Q. That's okay. Do you mind if I help you? 25] A. Yeah, could you help me? I have the one page</p>

Page 101	Page 103
<p>1] of it because, remember, I got it in pieces, so now I 2] think I've -- 97 what? 3] Q. 92. 4] A. Okay. Thank you. 5] Q. Sure. 6] A. Okay. Correct. 7] Q. All the answers are the same for -- 8] A. Yes, yes. They're identical documents, yes. 9] MS. ALIKHAN: Okay. I'd like to mark 10] Defendant's Exhibit 10. This is FORZA -- pardon me, 11] FORZA009912 through FORZA009936. 12] (Defendant's Exhibit No. 10 was marked for 13] identification.) 14] Q. BY MS. ALIKHAN: Take a look at that and let me 15] know when you've finished. 16] A. Okay. I've read it. 17] Q. Can you tell what version this -- or let me 18] back up for a second. 19] This first page indicates that this is an 20] e-mail from you to Mia Scheid and Lee Kemp and the 21] subject line is "Latest draft." It's dated Thursday, 22] September 8th, 2011, at 4:41 p.m. 23] A. Okay. 24] Q. And the attachment to the e-mail is business 25] plan prospectus, correct?</p>	<p>1] make a larger margin. 2] Q. What information did you base your belief that 3] the cost of the product was too high? 4] A. That was information feedback from Mia Scheid 5] and Lee Kemp. 6] Q. Do you know how they obtained that information? 7] A. I don't -- I don't know how they obtained it. 8] They just simply said they thought the amounts were 9] going to be too high for wrestlers to buy. 10] Q. Did they provide you with any data with respect 11] to that -- those thoughts? 12] A. Not regarding that -- no, not regarding that, 13] no. 14] Q. Did you do any independent research -- 15] A. No. 16] Q. -- to test that -- no? 17] A. No. 18] Q. So those changes were now incorporated into the 19] business plan as of September 8th, 2011, at 4:41? 20] A. Yes. 21] Q. Can you tell if there were any other changes 22] made to the business plan at this point? 23] A. Well, as I said at the bottom of this e-mail, 24] we downgraded our estimated number of individual sales 25] per club to 15 full wrestling packages and sales</p>
Page 102	Page 104
<p>1] A. Correct. 2] Q. In the e-mail you indicate that "Attached is 3] complete business plan (to this point)"? 4] A. Correct. 5] Q. Is it safe to assume this was a business plan 6] as of September 8th, 2011, at 4:41 p.m.? 7] A. Correct. 8] Q. You go on and you indicate that there were two 9] significant changes in the business plan? 10] A. Correct. 11] Q. Can you talk to me about what those changes 12] were and what they -- what impact they had on the plan? 13] A. Let's see. They would have -- and I'm basing 14] this on this document, but they would have reduced the 15] cost of the product. I believe at this point they 16] were -- we were worried that the cost of the product was 17] too high. 18] Q. And based on what? 19] A. Based on the fact that we thought that the 20] sales prices to the wrestlers were going to be too high 21] per unit, so we put -- if I recall, we lowered the 22] estimate of what we were going to sell to them and that 23] brought the cost estimates down. That brought the cost 24] estimates down, as it says here. Made the total cost 25] equal 45 percent, not 50 percent, because we needed to</p>	<p>1] per high school program to 13 full wrestler packages. 2] And as I said, it reflected the higher cost of 3] the product, not as many will buy. I assume people will 4] buy only specific products and wanted to keep the sales 5] dollars roughly the same to be realistic. So that's the 6] other change. 7] And we also downgraded the number of 8] high school programs by about a third. That was done 9] because we were going to focus on the clubs first. 10] Q. And that was a strategic decision by Mia and 11] Lee? 12] A. That was a -- a -- that was an assumption 13] change in the document. I don't believe it was a 14] strategic decision at that point. We were just trying 15] to create a document. So it was an assumption change in 16] the document itself. 17] Q. And at the bottom you ask, there's "Really only 18] one question left to ask. Are these prices doable?" 19] Did you -- what was the basis of your question? 20] A. It was a -- this would be a confirmation with 21] the client that the prices that are reflected in the 22] business plan pass -- do they pass their belief that 23] that would be able to be a price that the wrestler would 24] buy? So it was a confirmation and a testing of that 25] assumption for the document.</p>

Page 105

1] Q. Did you ask that question with respect to the  
2] prices prior to that?  
3] A. I would say I probably asked it every -- every  
4] iteration of this process, yes.  
5] Q. And did you receive verbal affirmations or  
6] affirmations in writing or any affirmation?  
7] A. I would say it would all be verbal  
8] affirmations. I don't think they were in writing, but  
9] they would have said, yes, they'll be able to afford  
10] that amount.  
11] Q. Based on your practice, do you typically seek  
12] confirmation when you make any changes to a business  
13] plan and prospectus by the client?  
14] A. Yes, all the time.  
15] Q. Do you keep records of those approvals or  
16] whatnot?  
17] A. No, I do not.  
18] Q. Would you act if --  
19] A. I mean, this would be one, I guess, but I  
20] didn't keep a record of it, as you can tell, since I  
21] didn't send it to you. So ...  
22] Q. Would you -- based on your habit and routine,  
23] would you act -- would you make a change without any  
24] approval to a business plan or prospectus?  
25] A. Could you rephrase that again? I'm sorry.

Page 106

1] Q. Sure. Based on your practice --  
2] A. Uh-huh.  
3] Q. -- would it be in your practice to make a  
4] change without approval by the client?  
5] A. Not without -- not without ultimate approval,  
6] no. I may have -- I may put a new number in on my own,  
7] but then I would always run that by the client.  
8] Q. So is it fair to assume that the final product  
9] would have been approved by the client?  
10] A. Absolutely.  
11] MS. ALIKHAN: I'm going to mark Exhibit 11.  
12] This is FORZA010009 through FORZA 1 -- pardon me --  
13] FORZA010033.  
14] (Defendant's Exhibit No. 11 was marked for  
15] identification.)  
16] Q. BY MS. ALIKHAN: Take a look at that and let me  
17] know when you've finished.  
18] A. Okay.  
19] Q. Page 1 of that document indicates that it's an  
20] e-mail from you to Mia and Lee Kemp regarding this  
21] sales -- a sales change, correct?  
22] A. Regarding an estimate assumption change for the  
23] documents.  
24] Q. And it was sent on September 9th, 2011?  
25] A. Correct.

Page 107

1] Q. And the attachment to it is a business plan  
2] prospectus half sale doc?  
3] A. Correct.  
4] Q. In the text you say, "I changed page 11 to a  
5] 15-day supply."  
6] That's your only change to the document, right?  
7] A. That's what I say, yes.  
8] Q. Okay. So on the next page, page 1 of the  
9] business plan, FORZA010010, it indicates that this is  
10] FORZA Technologies Business Plan, September 9th, 2011.  
11] A. Correct.  
12] Q. Is this the final business plan?  
13] A. I don't know because I know what I sent you and  
14] it might be. Okay.  
15] Q. You changed page 11 to a 15-day supply --  
16] A. Yes.  
17] Q. -- in this document. Why is that?  
18] A. I think that was at the request of Mia and Lee,  
19] Mia Scheid and Lee Kemp, because they felt it would be  
20] easier to sell in smaller increments; rather than 30-day  
21] supplies to sell in 15-day supplies to the wrestler.  
22] Q. And do you know what the basis of that was?  
23] A. They believed that the sales price would be  
24] more -- it would be more easily accepted by a wrestler.  
25] That's why if you double it and send them 30 days, it

Page 108

1] would double the sales price, and that number might  
2] create sticker shock for a wrestler or a family,  
3] whatever.  
4] Q. So in the previous versions we were working  
5] with 30-day supplies?  
6] A. Most of the time, yes. I believe that's true.  
7] I'd have to go back, but I think so, yes.  
8] Q. Okay. Did they provide you with any  
9] substantiation for that belief?  
10] A. No. Just their -- that's just their belief,  
11] yes.  
12] Q. Did you do any research into that assumption?  
13] A. No.  
14] MS. ALIKHAN: I'm going to mark this  
15] Defendant's 12.  
16] THE WITNESS: Are we done with this?  
17] (Defendant's Exhibit No. 12 was marked for  
18] identification.)  
19] Q. BY MS. ALIKHAN: Take a look at that and let me  
20] know when you've finished, please.  
21] A. What am I supposed to read?  
22] Q. Well, this is a group exhibit.  
23] A. Okay.  
24] Q. And it contains a subpoena to produce documents  
25] that was sent to Profit Link --

EXHIBIT

D

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FORZA TECHNOLOGIES, LLC,       )  
                                  Plaintiffs,    )  
                                  vs.                ) Civil No. 12-cv-07905  
PREMIER RESEARCH LABS, LP    )  
and ROBERT J. MARSHALL,       )  
individually,                    )  
                                  Defendants.     )

THE DEPOSITION OF MIA SCHEID

July 16, 2014

Chicago, Illinois

9:24 a.m.

Reported By:  
Cynthia J. Conforti, CSR, RPR, CRR  
Job No. 35096

<p style="text-align: right;">10</p> <p>1 DEPOSITION OF MIA SCHEID</p> <p>2 Q. Was there anybody else that was</p> <p>3 involved in creating the company besides you and Lee</p> <p>4 Kemp?</p> <p>5 A. No.</p> <p>6 MS. LUK: Objection, vague.</p> <p>7 A. Sorry.</p> <p>8 BY MR. KAISER:</p> <p>9 Q. Can you tell me what Fitness Arts is?</p> <p>10 A. It is a wellness center.</p> <p>11 Q. What kinds of things does Fitness Arts</p> <p>12 do?</p> <p>13 A. Quite a lot actually, but exercise,</p> <p>14 corrective exercise, nutrition, wellness,</p> <p>15 consultation.</p> <p>16 Q. Does Fitness Arts sell dietary</p> <p>17 supplements?</p> <p>18 A. Yes.</p> <p>19 Q. Are you the owner of Fitness Arts?</p> <p>20 A. Yes.</p> <p>21 Q. Are there any other owners of Fitness</p> <p>22 Arts?</p> <p>23 A. No.</p> <p>24 Q. So you are the sole owner of Fitness</p> <p>25 Arts.</p>	<p style="text-align: right;">12</p> <p>1 DEPOSITION OF MIA SCHEID</p> <p>2 on your Fitness Arts website, fitnessarts.org?</p> <p>3 A. Maybe. I don't know.</p> <p>4 Q. You have no knowledge sitting here</p> <p>5 today that Lee Kemp --</p> <p>6 A. No, I do not. I have not looked at</p> <p>7 that site. I don't know. I have an IT girl, and</p> <p>8 there's probably a lot of people listed on there</p> <p>9 that prob- -- that doesn't work there, so there's</p> <p>10 some transient or I don't know what you call that,</p> <p>11 you know, people go in and out, yeah.</p> <p>12 MS. LUK: Mia, slow down, let him</p> <p>13 finish his questions and give me time to object to</p> <p>14 his questions before you answer.</p> <p>15 THE WITNESS: Okay. Sorry.</p> <p>16 BY MR. KAISER:</p> <p>17 Q. So when did Lee Kemp work at Fitness</p> <p>18 Arts?</p> <p>19 MS. LUK: Objection, asked and</p> <p>20 answered.</p> <p>21 BY MR. KAISER:</p> <p>22 Q. You can answer.</p> <p>23 A. I'm thinking.</p> <p>24 Well, that's a...</p> <p>25 I don't know that he really worked for</p>
<p style="text-align: right;">11</p> <p>1 DEPOSITION OF MIA SCHEID</p> <p>2 A. No.</p> <p>3 Q. You don't have any boss at Fitness</p> <p>4 Arts?</p> <p>5 A. No.</p> <p>6 Q. Okay. How many employees are at</p> <p>7 Fitness Arts?</p> <p>8 A. Currently?</p> <p>9 Q. Yes, let's start there.</p> <p>10 A. Five including me.</p> <p>11 Q. Who are they?</p> <p>12 A. Laura Manna, Elizabeth Minor, Karen</p> <p>13 Selleck and Nizam Kaiser.</p> <p>14 Q. Is Lee Kemp no longer employed at</p> <p>15 Fitness Arts?</p> <p>16 A. No.</p> <p>17 Q. Who was employed at Fitness Arts</p> <p>18 during 2013?</p> <p>19 A. Same.</p> <p>20 Q. Was Lee Kemp employed at Fitness Arts?</p> <p>21 A. No.</p> <p>22 Q. Does Lee Kemp provide any services at</p> <p>23 Fitness Arts?</p> <p>24 A. No.</p> <p>25 Q. You're aware that Lee Kemp is listed</p>	<p style="text-align: right;">13</p> <p>1 DEPOSITION OF MIA SCHEID</p> <p>2 Fitness Arts. We -- he taught wrestling at Fitness</p> <p>3 Arts, and so that would be 2008. Yeah, 2008, the</p> <p>4 Olympic year.</p> <p>5 Q. So other than wrestling, other than</p> <p>6 teaching wrestling in 2008, Lee Kemp has not</p> <p>7 provided any services at Fitness Arts?</p> <p>8 A. No.</p> <p>9 Q. Ms. Scheid, you've alleged in claims</p> <p>10 against Premier Research Laboratories, I'll refer to</p> <p>11 them as PRL during this deposition just for brevity,</p> <p>12 but you've alleged in cross-claims against PRL and</p> <p>13 Dr. Marshall to have lost substantial business</p> <p>14 opportunities with Fitness Arts, your existing</p> <p>15 customers and potential new customers as a result of</p> <p>16 Dr. Marshall's actions; is that right?</p> <p>17 A. The --</p> <p>18 MS. LUK: Objection, form.</p> <p>19 Can you read that back?</p> <p>20 THE REPORTER: Yes.</p> <p>21 BY MR. KAISER:</p> <p>22 Q. You've alleged in cross-claims against</p> <p>23 PRL and Dr. Marshall to have lost substantial</p> <p>24 business opportunities with Fitness Arts, your</p> <p>25 existing customers and potential new customers as a</p>

4 (Pages 10 to 13)



294

1 DEPOSITION OF MIA SCHEID  
2 about it. Because, again, we had a -- a change of  
3 CPAs that year and that the books were pretty messed  
4 up. Couldn't -- not quite sure of all of the  
5 problems, nor did I really want to know, but that it  
6 was rectified, and I believe this is the correct  
7 one, and we may have left something out --  
8 **Q. When you -- I'm sorry. You have to**  
9 **tell us what -- you're pointing to a document saying**  
10 **this --**  
11 A. Oh, Exhibit 33.  
12 **Q. So Exhibit 33 you believe is correct.**  
13 A. This is the one I believe that was --  
14 was done by my CPA, yeah.  
15 **Q. When did you change CPAs again? What**  
16 **year was that?**  
17 A. It was between the two here. So I  
18 think the 2011 was still by Tony, and then 2012, but  
19 it wasn't -- maybe I should go back and explain.  
20 I think the year before this, I had an  
21 employee who embezzled, and she was managing the  
22 business. And she really messed up the entire  
23 QuickBooks system, and we had to have it  
24 forensically done, and so there was confusion.  
25 **Q. Okay.**

295

1 DEPOSITION OF MIA SCHEID  
2 A. And --  
3 **Q. You said a year before this you had an**  
4 **employee who embezzled. Let's break it down. What**  
5 **year --**  
6 A. Yeah, umm --  
7 **Q. -- was this? What year did the**  
8 **employee embezzle?**  
9 A. She was with me three years.  
10 **Q. What year did she embezzle?**  
11 A. All of them.  
12 **Q. Okay. When did you catch her?**  
13 A. I caught her, I believe it was 2010  
14 now that I think about it, so I know this seems like  
15 why -- why is it carrying on so long, but we tried  
16 to get it rectified, and the CPA that we had brought  
17 in said that -- I wanted it to start over and, you  
18 know, start -- and they said no, that it has to be  
19 -- everything has to match in QuickBooks, and it  
20 just took time, that we couldn't just start a new  
21 company. We couldn't start a new company. That we  
22 would have to take all of the past, so forensically  
23 make it right so that we could move forward.  
24 **Q. But didn't Forza start in 2011?**  
25 A. Yeah.

296

1 DEPOSITION OF MIA SCHEID  
2 **Q. And this was after the embezzlement**  
3 **stopped in 2010?**  
4 A. Fitness Arts.  
5 **Q. Okay. So how was -- how was the**  
6 **embezzlement as to Fitness Arts affecting the**  
7 **financial statements for Forza Technologies?**  
8 A. It affected it because there was I  
9 think chaos. I need to talk to my CPA to find out  
10 exactly what happened between the two, but I can't  
11 tell you specifically right at this moment, but  
12 there was confusion.  
13 **Q. Okay. So until sometime in 2012,**  
14 **there was chaos and confusion in your financial**  
15 **records at Forza Technologies. Sometime during 2012**  
16 **that chaos and confusion was rectified when you**  
17 **hired a new CPA, and you believe that Exhibit 33,**  
18 **which is a balance sheet as of December 31st, 2012,**  
19 **is accurate.**  
20 A. Yes.  
21 MS. LUK: Objection, form, compound.  
22 BY MR. KAISER:  
23 **Q. Okay. And so the implication here is**  
24 **that the balance sheet for 2011 may not be accurate;**  
25 **is that right?**

297

1 DEPOSITION OF MIA SCHEID  
2 A. I don't know.  
3 **Q. Okay. I'm going to just ask**  
4 **questions, and -- and if you don't know --**  
5 A. I don't know, I don't know.  
6 **Q. Yeah, okay.**  
7 **Well, you'll see on Exhibit 33 under**  
8 **Liabilities and Equity, you'll see line 2205, and it**  
9 **says: Due to Fitness Arts, \$17,929. Can you**  
10 **explain that?**  
11 A. That was all for use -- I mean their  
12 offices are at Fitness Arts. Forza did not pay rent  
13 or its share of any of the expenses. It used the,  
14 you know, we shared office staff as well as the  
15 offices physically, and that was what we came up  
16 with.  
17 **Q. Okay. This is an arbitrary number**  
18 **that you -- that Fitness Arts said --**  
19 A. No, the CPA figured out a percentage  
20 for it, and that's what he came up with, but that --  
21 it really was about shared expense.  
22 **Q. Okay. And you'll see back up at the**  
23 **top of Exhibit 33 under Assets, you see Product**  
24 **Inventory, \$324,612 of product inventory.**  
25 A. Um-hmm.

EXHIBIT

E

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FORZA TECHNOLOGIES, LLC,       )  
                                  Plaintiffs,    )  
                                  vs.                ) Civil No. 12-cv-07905  
PREMIER RESEARCH LABS, LP     )  
and ROBERT J. MARSHALL,        )  
individually,                    )  
                                  Defendants.     )

THE DEPOSITION OF PAUL DUGGAN

May 6, 2014

Chicago, Illinois

10:01 a.m.

Reported By:  
Sheri E. Liss, CSR, RPR, CRR, CLR, RSA  
Job No. 34197

18

1           **DEPOSITION OF PAUL DUGGAN**  
2       A.   First of all, it's "Dug-gan."  
3       **Q.   I apologize. Mr. Duggan.**  
4       A.   "Doo-gan" is one G, just phonetically.  
5       **Q.   Right. I'll make sure to correct**  
6       **myself.**  
7       A.   I talked to Judy Niro, I talked to Ray  
8       Niro, and I probably saw a few documents. I can't  
9       recall a specific name, but nothing -- a few  
10      documents.  
11      **Q.   How long did you speak to Judy Niro in**  
12      **preparation for this deposition?**  
13      A.   Probably one to two hours over time.  
14      **Q.   And when you say "over time," it wasn't**  
15      **one to two hours consecutively?**  
16      A.   No. I've spoken to her on more than one  
17      occasion.  
18      **Q.   And the aggregate being one to two**  
19      **hours?**  
20      A.   Yes.  
21      **Q.   In preparation for this deposition,**  
22      **correct?**  
23      A.   Yes.  
24      **Q.   Was this in person or over the phone?**  
25      A.   Over the phone.

19

1           **DEPOSITION OF PAUL DUGGAN**  
2       **Q.   Do you recall when that was?**  
3       A.   As recently as yesterday.  
4       **Q.   Do you recall the date of when you first**  
5       **spoke with her regarding the preparation of this**  
6       **deposition?**  
7       A.   No.  
8       **Q.   Did she show you any documents in**  
9       **preparation for this deposition?**  
10      A.   No.  
11      **Q.   You said you also spoke with Mr. Niro in**  
12      **preparation for this deposition. Could you tell me**  
13      **how long you spoke with Mr. Niro?**  
14      A.   Probably two or three times for 35 -- 30  
15      to 60 minutes each time.  
16      **Q.   Was this in person or over the phone?**  
17      A.   Both.  
18      **Q.   How many times did you meet with**  
19      **Mr. Niro in person in preparation for this**  
20      **deposition?**  
21      A.   I think twice.  
22      **Q.   Where?**  
23      A.   At the Rosebud Restaurant on Rush  
24      Street.  
25      **Q.   On both occasions?**

20

1           **DEPOSITION OF PAUL DUGGAN**  
2       A.   Yes.  
3       **Q.   How often did you speak to Mr. Niro over**  
4       **the phone in preparation for this deposition?**  
5       A.   Probably a few times.  
6       **Q.   Did Mr. Niro show you any documents in**  
7       **preparation for this deposition?**  
8       A.   One that I recall.  
9       **Q.   What was it?**  
10      A.   It was an unsigned -- I think it was  
11      termed an investment agreement between Passignano  
12      and Forza.  
13      **Q.   Did you do anything else to prepare for**  
14      **your deposition today, for the deposition of**  
15      **Passignano Patent Consulting?**  
16      A.   Other than conversations with Judy Niro  
17      and Ray Niro?  
18      **Q.   Yes.**  
19      A.   No.  
20      **Q.   You testified earlier that Mr. Niro and**  
21      **Judy Niro asked you to be the 30(b)(6) designee for**  
22      **Passignano Patent Consulting; is that correct?**  
23      A.   Yes. Actually, I'm not sure what my  
24      testimony was. I would say I was requested by  
25      Mr. Niro, not Mrs. Niro, to represent Passignano.

21

1           **DEPOSITION OF PAUL DUGGAN**  
2       **Q.   Had you had any conversations with Judy**  
3       **Niro prior to the times you spoke to her in**  
4       **preparation for this deposition?**  
5       A.   I've known her for 31 years, yes, 31  
6       years, since 1983, so I'd had numerous.  
7       **Q.   So you've had a relationship or an**  
8       **outstanding relationship with Ms. Niro outside of**  
9       **this.**  
10      A.   Outside of Passignano?  
11      **Q.   Correct.**  
12      A.   Right. Correct.  
13      **Q.   Would you consider yourself friends with**  
14      **Ms. Niro?**  
15      A.   With Mrs. Niro?  
16      **Q.   Yes.**  
17      A.   Absolutely.  
18      **Q.   Are you a friend of Mr. Niro?**  
19      A.   Yes.  
20      **Q.   Can you talk to me about what Passignano**  
21      **Patent Consulting is?**  
22      MR. NIRO: Objection. "Talk to me,"  
23      it's not a question.  
24      MS. ALIKHAN: What is it?  
25      MR. NIRO: Are you talking to him or me?

46

1 DEPOSITION OF PAUL DUGGAN  
2 BY MS. ALIKHAN:  
3 Q. Based on what?  
4 A. Based on my conversations with Mr. Niro  
5 who is Passignano's advisor.  
6 Q. Why did Passignano believe Forza was a  
7 good company to invest in?  
8 A. Their advisors. Mr. Niro thought that a  
9 combination of Mr. Kemp and the product and the  
10 industry was -- and the risk reward was sufficient  
11 to make an investment.  
12 Q. Did Forza have any product to offer at  
13 this time?  
14 A. I don't know.  
15 Q. Did Forza ever provide Passignano with  
16 samples of its product?  
17 A. I don't know.  
18 Q. Did Forza ever provide Passignano with  
19 research with respect to its product?  
20 A. I don't know.  
21 Q. Did Passignano have any information with  
22 respect to Forza's members' business acumen?  
23 A. I don't know.  
24 Q. Did Passignano have any knowledge that  
25 Mr. Kemp had previously filed for bankruptcy?

47

1 DEPOSITION OF PAUL DUGGAN  
2 A. I don't know.  
3 Q. Did Passignano have any knowledge as to  
4 Mr. Kemp's past business performance?  
5 A. I don't know.  
6 Q. Did Passignano have any knowledge with  
7 respect to Ms. Scheid's past business performance?  
8 A. I don't know.  
9 Q. If you could put Exhibit 3 to the side.  
10 I'm going to mark this as Duggan  
11 Exhibit 4, I believe we're on.  
12 (Whereupon, Duggan Exhibit 4  
13 marked as requested.)  
14 (Whereupon, the document was  
15 tendered.)  
16 BY MS. ALIKHAN:  
17 Q. Would you take a look at that document  
18 and let me know when you've reviewed it.  
19 A. I read it.  
20 Q. Have you seen this document before,  
21 Mr. Duggan?  
22 A. Yes.  
23 Q. The topics, it says "Investment  
24 Agreement," correct?  
25 A. Yes.

48

1 DEPOSITION OF PAUL DUGGAN  
2 Q. And it's between Raymond P. Niro and  
3 Passignano Patent Consulting ("investors") and Forza  
4 Technologies, LLC, and its members on the other  
5 hand.  
6 Do you see that at the top?  
7 A. Yes.  
8 Q. And the effective date is blank day of  
9 September, 2011.  
10 A. Yes.  
11 Q. Correct?  
12 A. Yes.  
13 Q. In this agreement it states that the  
14 "Investors shall pay Forza \$500,000 in installments"  
15 and then it gives "as follows."  
16 Do you see where I am in Paragraph  
17 1 or Section 1?  
18 A. Yes.  
19 Q. \$250,000 was to be paid within 10 days  
20 of the effective date of this agreement.  
21 Did I read that correctly?  
22 A. Yes.  
23 Q. And then \$250,000 was to be paid 10 days  
24 before the second installment payment is due for the  
25 purchase of the initial supply of nutritional

49

1 DEPOSITION OF PAUL DUGGAN  
2 products from Premier Research Labs, which is  
3 estimated to be in November or December of 2011,  
4 correct?  
5 A. Yes.  
6 Q. Section 2 states that "Forza will then  
7 repay investors and provide a substantial premium  
8 for this initial investment and the risk associated  
9 with it as follows."  
10 Do you see that?  
11 A. Yes.  
12 Q. Do you have any knowledge as to what the  
13 risk associated with this agreement actually was?  
14 A. One would be the performance of Premier  
15 to make the product correctly.  
16 Q. Anything else?  
17 A. There's a risk -- under financial  
18 theory, the only risk free rate of return is United  
19 States treasury bill, and everything above that has  
20 a risk. So a baseline for risk is United States  
21 treasury bill which is considered to be zero risk  
22 and everything above that in the investment world is  
23 considered to have risk.  
24 So that's -- using that as a  
25 baseline, clearly a transaction like this would have

<p style="text-align: right;">66</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 BY MS. ALIKHAN:</p> <p>3 Q. Have you seen this document before,</p> <p>4 Mr. Duggan?</p> <p>5 A. I think so.</p> <p>6 Q. And this is FORZA015892 through</p> <p>7 FORZA015898.</p> <p>8 At the top it says, "Forza</p> <p>9 Technologies, LLC, subscription agreement," correct?</p> <p>10 A. Yes.</p> <p>11 Q. What's the purpose of this document?</p> <p>12 A. To convert the Passignano loan of</p> <p>13 \$550,000 from a loan to a 25 percent interest in</p> <p>14 Forza Technologies, LLC.</p> <p>15 Q. Why was that done?</p> <p>16 A. Specifically, I'm not sure.</p> <p>17 Q. So you're here today on behalf of</p> <p>18 Passignano Patent Consulting Company, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And you can't specifically answer why</p> <p>21 this document was drafted?</p> <p>22 MR. NIRO: I think he's answered that.</p> <p>23 To -- I thought he said to convert the loan to an</p> <p>24 ownership interest.</p> <p>25</p>	<p style="text-align: right;">68</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 preparation for your deposition today?</p> <p>3 A. No.</p> <p>4 Q. So you don't know why Passignano wanted</p> <p>5 to convert their loan into a membership interest in</p> <p>6 Forza?</p> <p>7 A. Like I said, it ended up being voided,</p> <p>8 this agreement, so I didn't delve into the specifics</p> <p>9 of it because it's void.</p> <p>10 Q. Sure. And I understand that it was</p> <p>11 void.</p> <p>12 A. And I also can't speak for Forza.</p> <p>13 Q. I'm not asking you to speak for Forza.</p> <p>14 I'm asking you to speak to why Passignano entered</p> <p>15 into an agreement converting a loan into a</p> <p>16 membership interest with Forza?</p> <p>17 A. The specific why, I don't know.</p> <p>18 Q. Was this based off the same initial loan</p> <p>19 that was provided to Forza for \$550,000, or was this</p> <p>20 a different agreement?</p> <p>21 A. This was the same loan. The original</p> <p>22 loan only came from Passignano, did not come from</p> <p>23 Ray Niro. It came from Passignano. So that the</p> <p>24 original investment agreement was effectively never</p> <p>25 entered into because Niro didn't invest, Passignano</p>
<p style="text-align: right;">67</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 BY MS. ALIKHAN:</p> <p>3 Q. Why?</p> <p>4 A. Well, I can't speak for the issue of the</p> <p>5 units. I can't speak for Forza.</p> <p>6 Q. Can you speak to the agreement? Can you</p> <p>7 speak to why this document came into fruition?</p> <p>8 A. Well, from a -- I could speculate on the</p> <p>9 Forza side, but on the Passignano side, they had an</p> <p>10 investment of \$550,000 cash and they were converting</p> <p>11 it from a loan to an ownership of units.</p> <p>12 Q. Why?</p> <p>13 A. Well, it ended up being voided so I</p> <p>14 really didn't -- when they looked to do it and then</p> <p>15 when it had adverse tax consequences it was undone,</p> <p>16 so I didn't spend a lot of time thinking into the</p> <p>17 why.</p> <p>18 Q. It was signed by Bonnie Foley, member of</p> <p>19 Passignano Patent Consulting, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Does Bonnie Foley know why?</p> <p>22 A. She probably got advice from counsel,</p> <p>23 but I'd be guessing would she know why. I don't</p> <p>24 know.</p> <p>25 Q. Did you talk to Bonnie Foley in</p>	<p style="text-align: right;">69</p> <p>1 DEPOSITION OF PAUL DUGGAN</p> <p>2 did. Passignano's converting their \$550,000 loan</p> <p>3 into a LLC interest.</p> <p>4 Q. Where is the agreement between</p> <p>5 Passignano and Forza only with respect to that</p> <p>6 \$550,000 loan?</p> <p>7 MR. NIRO: You mean on the agreements</p> <p>8 that are already marked?</p> <p>9 BY MS. ALIKHAN:</p> <p>10 Q. Yes. You testified that those were</p> <p>11 never entered into, didn't you?</p> <p>12 A. I said I didn't see a signed copy of</p> <p>13 those. Now, if you want to connect all the dots,</p> <p>14 they're referring to a loan and they're going to</p> <p>15 convert it. And Passignano had loaned -- tendered</p> <p>16 previously \$550,000 and now they're converting it</p> <p>17 into a LLC interest.</p> <p>18 Q. Have you ever seen the executed document</p> <p>19 where Passignano by itself loaned Forza Technologies</p> <p>20 \$550,000?</p> <p>21 MR. NIRO: Other than the documents that</p> <p>22 you already put in front of him?</p> <p>23 BY MS. ALIKHAN:</p> <p>24 Q. In general, have you seen any documents</p> <p>25 substantiating that?</p>

EXHIBIT

F

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FORZA TECHNOLOGIES, LLC,

Plaintiff,

v.

PREMIER RESEARCH LABS, LP and  
ROBERT J. MARSHALL, individually.

Defendants.

Civil Action No. 12-cv-07905

Honorable Joan B. Gottschall

---

**PLAINTIFF'S RULE 26(a)(1) DISCLOSURES**

In accordance with Fed.R.Civ.P. 26(a)(1), Plaintiff makes the following initial disclosures. These disclosures are preliminary and discovery is ongoing. Plaintiff reserves the right to correct, amend, or modify these disclosures based on new information

**A. The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information.**

1. Mia Scheid  
Forza Technologies, LLC  
c/o Niro, Scavone, Haller & Niro

As presently advised, Ms. Scheid may have discoverable information relating to the background of Forza Technologies, LLC ("Forza"); the relationship and business dealings between Forza and Premier Research Labs, LP ("Premier"); the relationship and business dealings between Forza and Robert J. Marshall ("Marshall"); the allegations of fraud and misrepresentations by Marshall; and the harm caused by Premier and Marshall.



2. Lee Kemp  
Forza Technologies, LLC  
c/o Niro, Scavone, Haller & Niro

As presently advised, Mr. Kemp may have discoverable information relating to the background of Forza; the relationship and business dealings between Forza and Premier; the relationship and business dealings between Forza and Marshall; the allegations of fraud and misrepresentations by Marshall; and the harm caused by Premier and Marshall.

3. One or more employees or officers of Premier Research Labs, LP

As presently advised, one or more officers, directors, employees, partners, contractors, and/or managing agents of Premier (including but not limited to: Stephen Lerner, Sibelle Naumer Belcher, David Himel, Andrea Hall, Cheyenne Johnson, Sharla Hughes, and Hesaam Moallem) may have discoverable information relating to the factual and legal bases for Premier's defenses and/or claims in this suit; the organizational structure of Premier; the employment and responsibilities of Marshall; how Premier regularly conducts business with other companies; the revenue of Premier; Marshall's fraud and misrepresentations; the breach of contract with Forza; and the harm caused by Premier and Marshall.

4. Robert J. Marshall

As presently advised, Marshall may have discoverable information relating to the factual and legal bases for Marshall's defenses and/or claims in this suit; the organizational structure of Premier; his employment and responsibilities at Premier and/or other companies; how Premier regularly conducts business with other companies; the revenue of Premier; his fraud and misrepresentations; the breach of contract with Forza; and the harm caused by himself and Premier.

**B. A copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party**

**and that the disclosing party may use to support its claims or defenses, unless solely for impeachment.**

The following categories of documents may be used to support the claims asserted by Forza. However, Forza will not produce documents that are privileged or otherwise protected from disclosure in accordance with the Federal Rules of Civil Procedure. Plaintiff identifies the following categories of documents and things, which are located at 181 West Madison Street, Suite 4600, Chicago, Illinois, 60602.

1. Non-privileged company files of Forza.
2. Correspondence between Forza and Defendants.
3. Writings evidencing agreement between Forza and Defendants.
4. Development of Forza's products with Defendants.
5. Forza's products.
6. The effort, cost and expense in developing and producing Forza's products, including delays by Defendants.
7. Actions and inactions evidencing Defendants' breach of contract.
8. Damage and/or injury caused to Forza as a result of Defendants' breach of contract and other acts set forth in Forza's Amended Complaint.

Forza reserves the right to supplement and/or amend these initial disclosures as discovery progresses in this suit.

**C. A computation of any category of damages claimed by the disclosing party, making available for inspection and copying under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing the nature and extent of injuries suffered.**

Forza seeks monetary damages adequate to compensate for Defendants' breach of contract and its expected sales and profits had the contract been performed. Plaintiff is also

entitled to an award of damages for fraud and exemplary damages for fraud. Plaintiff is also entitled to pre- and post- judgment interest.

Forza is unable to calculate the precise amount of actual damages at this time due to the lack of discovery from Defendants' pertaining to Defendants. Forza will provide a precise computation of damages after it has obtained sufficient information through the discovery process. At a minimum, Forza expected it would have made at least \$500,000 every 3 months had Defendants satisfied their obligations.

**D. For inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.**

Not applicable.

Respectfully submitted,

/s/ Olivia T. Luk

Raymond P. Niro  
Olivia T. Luk  
Gabriel I. Opatken  
Niro, Haller & Niro  
181 West Madison Street, Suite 4600  
Chicago, Illinois 60602

***ATTORNEYS FOR FORZA TECHNOLOGIES, LLC.***

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on December 4, 2012 the foregoing

**PLAINTIFF'S RULE 26(a)(1) DISCLOSURES**

was served upon the following counsel of record via electronic transmission.

Rakesh M. Amin  
Ryan M. Kaiser  
Amin Talati, LLC  
55 West Monroe Street, Suite 3400  
Chicago, Illinois 60603  
ryan@amintalati.com

/s/ Olivia T. Luk  
NIRO, HALLER & NIRO  
Attorneys for Forza Technologies, LLC

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FORZA TECHNOLOGIES, LLC,

Plaintiff,

v.

PREMIER RESEARCH LABS, LP and  
ROBERT J. MARSHALL, individually.

Defendants.

Civil Action No. 12-cv-07905

Honorable Joan B. Gottschall

---

**PLAINTIFF'S SUPPLEMENTAL RULE 26(a)(1) DISCLOSURES**

In accordance with Fed.R.Civ.P. 26(a)(1), Plaintiff makes the following supplemental initial disclosures. These disclosures are preliminary and discovery is ongoing. Accordingly, Plaintiff reserves the right to supplement, correct, amend, or modify these disclosures based on new information.

**A. The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information.**

1. Mia Scheid  
Forza Technologies, LLC  
c/o Niro, Haller & Niro

As presently advised, Ms. Scheid may have discoverable information relating to the background of Forza Technologies, LLC ("Forza"); the relationship and business dealings between Forza and Premier Research Labs, LP ("Premier"); the relationship and business dealings between Forza and Robert J. Marshall ("Marshall"); the allegations of fraud and misrepresentations by Marshall; and the harm caused by Premier and Marshall.

2. Lee Kemp  
Forza Technologies, LLC  
c/o Niro, Haller & Niro

As presently advised, Mr. Kemp may have discoverable information relating to the background of Forza; the relationship and business dealings between Forza and Premier; the relationship and business dealings between Forza and Marshall; the allegations of fraud and misrepresentations by Marshall; and the harm caused by Premier and Marshall.

3. Woo Chun Paik  
Forza Technologies, LLC  
c/o Niro, Haller & Niro

As presently advised, Ms. Paik may have discoverable information relating to FORZA product formulations.

4. One or more employees, agents, contractors or representatives of Premier  
Research Labs, LP

As presently advised, one or more officers, directors, employees, partners, contractors, and/or managing agents of Premier (including but not limited to: Stephen Lerner, Sibylle Naumer-Belcher, David Himel, Andrea Hall, Cheyenne Johnson, Sharla Hughes, and Hesaam Moallem) may have discoverable information relating to the factual and legal bases for Premier's defenses and/or claims in this suit; the organizational structure of Premier; the employment and responsibilities of Marshall; how Premier regularly conducts business with other companies; the revenue of Premier; Marshall's fraud and misrepresentations; the breach of contract with Forza; and the harm caused by Premier and Marshall.

5. Robert J. Marshall

As presently advised, Mr. Marshall may have discoverable information relating to the factual and legal bases for Marshall's defenses and/or claims in this suit; the organizational structure of Premier; his employment and responsibilities at Premier and/or other companies;

how Premier regularly conducts business with other companies; the revenue of Premier; his fraud and misrepresentations; the breach of contract with Forza; and the harm caused by himself and Premier.

6. Hesaam Moallem  
3500 Wadley Place, Building B  
Austin, TX 78728

As presently advised and in light of Defendants' Initial Disclosures, Mr. Moallem is General Counsel at Premier, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, and the relationship between the parties, including damages.

7. Stephen Lerner  
3500 Wadley Place, Building B  
Austin, TX 78728

As presently advised and in light of Defendants' Initial Disclosures, Mr. Lerner is the VP of Operations at Premier, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, the relationship between the parties, and the manufacture of FORZA products, including damages.

8. Sibylle Naumer-Belcher  
3500 Wadley Place, Building B  
Austin, TX 78728

As presently advised and in light of Defendants' Initial Disclosures, Ms. Naumer-Belcher is the Production Manager at Premier, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, the relationship between the parties, and the manufacture of FORZA products, including damages.

9. Andrea Hall

As presently advised and in light of Defendants' Initial Disclosures, Ms. Hall was the Quality Manager at Premier, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, the relationship between the parties, and the manufacture of FORZA products, including damages.

10. Nick Labinsky  
3500 Wadley Place, Building B  
Austin, TX 78728

As presently advised and in light of Defendants' Initial Disclosures, Mr. Labinsky was the Laboratory Supervisor at Premier during the time FORZA products were being manufactured, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, the relationship between the parties, and the manufacture of FORZA products, including damages. As presently advised, Labinsky is now the Product Development Supervisor at Premier.

11. Brian Zielinski  
3500 Wadley Place, Building B  
Austin, TX 78728

As presently advised and in light of Defendants' Initial Disclosures, Mr. Zielinski was the Quality Engineer at Premier during the time FORZA products were being manufactured, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, the relationship between the parties, and the manufacture of FORZA products, including damages. As presently advised, Zielinski is now the Quality Assurance Manager at Premier.

12. Dr. Roger J. Geronimo  
1625 Bay Hawk Lane or 1645 Bay Hawk Lane  
St. Augustine, FL 32084



As presently advised, Dr. Geronimo is President of Columbia Pacific University, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Marshall's education.

13. Earon Kavanagh  
Contact Information Unknown

As presently advised, Mr. Kavanagh is Vice President of Columbia Pacific University, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Marshall's education.

14. Scott Bazarre  
Contact Information Unknown

As presently advised, Mr. Bazarre is Alumni Affairs Director of Columbia Pacific University, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Marshall's education.

15. John Allison  
Leading Effect  
7637 N. Jersey Street  
Portland, OR 97203  
(206) 261-7543

As presently advised, Mr. Allison is Recording Secretary of Columbia Pacific University, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Marshall's education.

16. Dennis Gronek, Esq.  
Gronek & Associates  
[fdalaw@gronekassociates.com](mailto:fdalaw@gronekassociates.com)  
(312) 655-1800

As presently advised, Mr. Gronek may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, the relationship between the parties, and the manufacture of FORZA products, including damages.

17. Tim Harms  
Contact through counsel

As presently advised, Mr. Harms may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, the relationship between the parties, and the manufacture of FORZA products, including damages.

18. Brad Martin  
Contact through counsel

As presently advised, Mr. Martin may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, the relationship between the parties, and the manufacture of FORZA products, including damages.

19. One or more persons involved with Rock Point Logistics  
901 Bilter Rd.  
Aurora, IL 60502

As presently advised, one or more persons at Rock Point Logistics, including but not limited to Gil De La Paz, may have knowledge of Premier, Marshall, and the relationship between the parties, including damages.

20. One or more persons involved with WePackItAll  
2745 Huntington Dr.  
Duarte, CA 91010

As presently advised, one or more persons at WePackItAll, including but not limited to Sharla Hughes, may have knowledge of Premier, Marshall, and the relationship between the parties, including damages.

21. One or more persons involved with Chromatic Labels  
16782 Von Karman Ave.  
Building 33  
Irvine, CA 92606

As presently advised, one or more persons at Chromatic Labels, including but not limited to Mark Oshman, may have knowledge of Premier, Marshall, and the relationship between the parties, including damages.

22. One or more persons involved with Mudd Advertising  
211 West Wacker Drive (2<sup>nd</sup> Floor)  
Chicago, IL 60606

As presently advised, one or more persons at Mudd Advertising may have knowledge of Premier, Marshall, and the relationship between the parties, including damages.

23. One or more persons involved with Logic PAKaging, Inc.  
3530 W. Lake Center Drive  
Santa Ana, CA 92704

As presently advised, one or more persons at Logic PAKaging, Inc., including but not limited to Lori Robinson, may have knowledge of Premier, Marshall, and the relationship between the parties, including damages.

24. As presently advised, various third parties who were formerly employed by Marshall and/or Premier and/or offered employment by Marshall and/or Premier in Premier's Santa Monica (or other) office may have knowledge of Premier, Marshall, and the relationship between the parties, including damages.

**B. A copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment.**

The following categories of documents may be used to support the claims asserted by Forza. However, Forza will not produce documents that are privileged or otherwise protected from disclosure in accordance with the Federal Rules of Civil Procedure. Forza identifies the following categories of documents and things, which are located at 181 West Madison Street, Suite 4600, Chicago, Illinois, 60602 and/or the offices of Forza.

1. Non-privileged company files of Forza.
2. Correspondence between Forza and Defendants.
3. Writings evidencing agreement between Forza and Defendants.
4. Development of Forza's products with Defendants.
5. Forza's products.
6. The effort, cost and expense in developing and producing Forza's products, including delays by Defendants.
7. Actions and inactions evidencing Defendants' breach of contract.
8. Damage and/or injury caused to Forza as a result of Defendants' breach of contract and other acts set forth in Forza's First Amended Complaint.

Discovery has only just commenced and Forza reserves the right to supplement and/or amend these initial disclosures as discovery progresses in this suit.

**C. A computation of any category of damages claimed by the disclosing party, making available for inspection and copying under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing the nature and extent of injuries suffered.**

Forza seeks monetary damages adequate to compensate for Defendants' breach of contract. As one measure of damages for breach of contract, Forza intends to seek the value of its expected sales and profits had the terms of the agreement been performed fully and satisfactorily. Forza also seeks an award of damages adequate to compensate for Defendants' fraud. In addition to compensatory damages for fraud, Forza intends to seek exemplary damages. Forza is also entitled to pre- and post-judgment interest.

Forza intends to prove damages for breach of contract based at least in part upon its expectation of the position in which it otherwise would have been had Marshall and Premier

fully performed their obligations to supply acceptable products meeting Forza's requirements and specifications. Forza believes that it could have sold substantial quantities of the products had they been timely delivered during the Olympic year and during the wrestling season as agreed by the parties. Supporting documents include, but are not limited to, Forza's Business Plan and its forecast of sales. Mia Scheid and Lee Kemp are most knowledgeable about Forza's expectancy and the sales and profit forecasts.

Fraud is an intentional tort and both compensatory and punitive damages are available to Forza. Here, Forza is entitled to both compensatory and punitive damages (sufficient to deter similar improper conduct in the future), including interest.

Forza anticipates that a qualified expert may rely upon at least the following as evidence of the injury sustained by Forza and directly caused by Defendants:

- The time, effort and money Forza spent for the creation and establishment of its business.
- The time, effort and money Forza spent for a license to be the exclusive supplier to USA Wrestling.
- The value of the time spent by employees of Forza, in particular, the amount of time spent above and beyond that required in the day-to-day operation of the business that was subsequently required as an effect of Defendants' conduct.
- Forza's accounting and legal expenses.
- Expenses paid to all third parties in relation to the Forza products contemplated in the parties' agreement including, but not limited to, WePackItAll, Chromatic Labels, Rockpoint Logistics, and Mudd Advertising.

Documents or other evidentiary material related to Forza's computation of damages and not privileged or protected from disclosure will be produced in accordance with the Agreed Protective Order.

**D. For inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.**

Not applicable.

Respectfully submitted,

/s/ Olivia T. Luk

Raymond P. Niro  
Olivia T. Luk  
Gabriel I. Opatken  
Niro, Haller & Niro  
181 West Madison Street, Suite 4600  
Chicago, Illinois 60602

*Attorneys for Forza Technologies, LLC.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on December 19, 2012 the foregoing

**PLAINTIFF'S SUPPLEMENTAL RULE 26(a)(1) DISCLOSURES**

was served upon the following counsel of record via electronic transmission.

Rakesh M. Amin  
Ryan M. Kaiser  
Amin Talati, LLC  
55 West Monroe Street, Suite 3400  
Chicago, Illinois 60603  
rakesh@amintalati.com  
ryan@amintalati.com

/s/ Olivia T. Luk  
NIRO, HALLER & NIRO  
Attorneys for Forza Technologies, LLC

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FORZA TECHNOLOGIES, LLC,

Plaintiff,

v.

PREMIER RESEARCH LABS, LP and  
ROBERT J. MARSHALL, individually.

Defendants.

Civil Action No. 12-cv-07905

Honorable Joan B. Gottschall  
Magistrate Judge Young B. Kim

---

**PLAINTIFF'S SUPPLEMENTAL RULE 26(a)(1) DISCLOSURES**

In accordance with Fed.R.Civ.P. 26(a)(1) and the Court's Order (Dkt. 43), Plaintiff makes the following supplemental initial disclosures. These disclosures are preliminary and discovery is ongoing. Accordingly, Plaintiff reserves the right to supplement, correct, amend, or modify these disclosures based on new information.

**A. The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information.**

1. Mia Scheid  
Forza Technologies, LLC  
c/o Niro, Haller & Niro

As presently advised, Ms. Scheid may have discoverable information relating to the background of Forza Technologies, LLC ("Forza"); the relationship and business dealings between Forza and Premier Research Labs, LP ("Premier"); the relationship and business dealings between Forza and Robert J. Marshall ("Marshall"); the allegations of fraud and misrepresentations by Marshall and the harm caused by Premier and Marshall; tortious interference with business relations and prospective economic advantage by Marshall; and unfair competition by Marshall.



2. Lee Kemp  
Forza Technologies, LLC  
c/o Niro, Haller & Niro

As presently advised, Mr. Kemp may have discoverable information relating to the background of Forza; the relationship and business dealings between Forza and Premier; the relationship and business dealings between Forza and Marshall; the allegations of fraud and misrepresentations by Marshall; and the harm caused by Premier and Marshall.

3. Woo Chun Paik  
Forza Technologies, LLC  
c/o Niro, Haller & Niro

As presently advised, Ms. Paik may have discoverable information relating to FORZA product formulations.

4. One or more employees, agents, contractors or representatives of Premier  
Research Labs, LP

As presently advised, one or more officers, directors, employees, partners, contractors, and/or managing agents of Premier (including but not limited to: Linda Forbes, Sibylle Naumer-Belcher, David Himel, Cheyenne Johnson, Sharla Hughes, and Hesaam Moallem) may have discoverable information relating to the factual and legal bases for Premier's defenses and/or claims in this suit; the organizational structure of Premier; the employment and responsibilities of Marshall; how Premier regularly conducts business with other companies; the revenue of Premier; Marshall's fraud and misrepresentations; the breach of contract with Forza; and the harm caused by Premier and Marshall.

5. Robert J. Marshall

As presently advised, Mr. Marshall may have discoverable information relating to the factual and legal bases for Marshall's defenses and/or claims in this suit; the organizational structure of Premier; his employment and responsibilities at Premier and/or other companies;

how Premier regularly conducts business with other companies; the revenue of Premier; his fraud and misrepresentations; the breach of contract with Forza; and the harm caused by himself and Premier; his actions that have caused tortious interference with Mia Scheid's business relations and prospective economic advantage; and unfair competition.

6. Hesaam Moallem  
3500 Wadley Place, Building B  
Austin, TX 78728

As presently advised and in light of Defendants' Initial Disclosures, Mr. Moallem is General Counsel at Premier, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, and the relationship between the parties, including damages.

7. Stephen Lermer

As presently advised and in light of Defendants' Initial Disclosures, Mr. Lermer is the former VP of Operations at Premier, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, the relationship between the parties, and the manufacture of FORZA products, including damages.

8. Sibylle Naumer-Belcher  
3500 Wadley Place, Building B  
Austin, TX 78728

As presently advised and in light of Defendants' Initial Disclosures, Ms. Naumer-Belcher is the Production Manager at Premier, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, the relationship between the parties, and the manufacture of FORZA products, including damages.

9. Andrea Hall

As presently advised and in light of Defendants' Initial Disclosures, Ms. Hall was the Quality Manager at Premier, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, the relationship between the parties, and the manufacture of FORZA products, including damages.

10. Nick Labinsky  
3500 Wadley Place, Building B  
Austin, TX 78728

As presently advised and in light of Defendants' Initial Disclosures, Mr. Labinsky was the Laboratory Supervisor at Premier during the time FORZA products were being manufactured, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, the relationship between the parties, and the manufacture of FORZA products, including damages. As presently advised, Labinsky is now the Product Development Supervisor at Premier.

11. Brian Zielinski  
3500 Wadley Place, Building B  
Austin, TX 78728

As presently advised and in light of Defendants' Initial Disclosures, Mr. Zielinski was the Quality Engineer at Premier during the time FORZA products were being manufactured, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, the relationship between the parties, and the manufacture of FORZA products, including damages. As presently advised, Zielinski is now the Quality Assurance Manager at Premier.

12. Dr. Roger J. Geronimo  
1625 Bay Hawk Lane or 1645 Bay Hawk Lane  
St. Augustine, FL 32084

As presently advised, Dr. Geronimo is President of Columbia Pacific University, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Marshall's education.

13. Earon Kavanagh  
Contact Information Unknown

As presently advised, Mr. Kavanagh is Vice President of Columbia Pacific University, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Marshall's education.

14. Scott Bazarre  
Contact Information Unknown

As presently advised, Mr. Bazarre is Alumni Affairs Director of Columbia Pacific University, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Marshall's education.

15. John Allison  
Leading Effect  
7637 N. Jersey Street  
Portland, OR 97203  
(206) 261-7543

As presently advised, Mr. Allison is Recording Secretary of Columbia Pacific University, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Marshall's education.

16. Dennis Gronek, Esq.  
Gronek & Associates  
[fdalaw@gronekassociates.com](mailto:fdalaw@gronekassociates.com)  
(312) 655-1800

As presently advised, Mr. Gronek may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, the relationship between the parties, and the manufacture of FORZA products, including damages.

17. Tim Harms  
Contact through counsel

As presently advised, Mr. Harms may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, the relationship between the parties, and the manufacture of FORZA products, including damages.

18. Brad Martin  
Address unknown

As presently advised, Mr. Martin may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, the relationship between the parties, and the manufacture of FORZA products, including damages.

19. One or more persons involved with Rock Point Logistics  
901 Bilter Rd.  
Aurora, IL 60502

As presently advised, one or more persons at Rock Point Logistics, including but not limited to Gil De La Paz, may have knowledge of Premier, Marshall, and the relationship between the parties, including damages.

20. One or more persons involved with WePackItAll  
2745 Huntington Dr.  
Duarte, CA 91010

As presently advised, one or more persons at WePackItAll, including but not limited to Sharla Hughes, may have knowledge of Premier, Marshall, and the relationship between the parties, including damages.

21. One or more persons involved with Chromatic Labels  
16782 Von Karman Ave.  
Building 33  
Irvine, CA 92606

As presently advised, one or more persons at Chromatic Labels, including but not limited to Mark Oshman, may have knowledge of Premier, Marshall, and the relationship between the parties, including damages.

22. One or more persons involved with Mudd Advertising  
211 West Wacker Drive (2<sup>nd</sup> Floor)  
Chicago, IL 60606

As presently advised, one or more persons at Mudd Advertising may have knowledge of Premier, Marshall, and the relationship between the parties, including damages.

23. One or more persons involved with Logic PAKaging, Inc.  
3530 W. Lake Center Drive  
Santa Ana, CA 92704

As presently advised, one or more persons at Logic PAKaging, Inc., including but not limited to Lori Robinson, may have knowledge of Premier, Marshall, and the relationship between the parties, including damages.

24. As presently advised, various third parties who were formerly employed by Marshall and/or Premier and/or offered employment by Marshall and/or Premier in Premier's Santa Monica (or other) office may have knowledge of Premier, Marshall, and the relationship between the parties, including damages.

25. Jennifer Gibson  
U.S. Olympic Committee  
1 Olympic Plaza  
Colorado Springs, CO 80909

Ms. Gibson may have knowledge of harm suffered by Forza as a result of contaminated product manufactured by Premier.

26. Becky Achen  
The National Center for Drug Free Sport, Inc.  
2537 Madison Ave.  
Kansas City, MO 64108

Ms. Achen may have knowledge of harm suffered by Forza as a result of contaminated product manufactured by Premier.

27. Kevin Johnson  
Iowa State Head Wrestling Coach  
Jacobson Athletic Building  
Ames, Iowa 50011-1140

Mr. Johnson may have knowledge relating to harm suffered by Forza, including damages.

28. Tim Weesner  
Iowa State Wrestling  
Jacobson Athletic Building  
Ames, Iowa 50011-1140

Mr. Johnson may have knowledge relating to harm suffered by Forza, including damages.

29. Larry Nugent  
USA Wrestling  
6155 Lehman Drive  
Colorado Springs, CO 80918

Mr. Nugent may have knowledge relating to harm suffered by Forza, including damages.

30. Mike Ripley  
Contact through counsel

Mr. Ripley may have knowledge relating to harm suffered by Forza, including damages.

31. Cheyenne Johnson  
Address unknown

Ms. Johnson may have discoverable information relating to the allegations in the First Amended Complaint.

To the extent additional individuals with knowledge relevant to this dispute are identified, Forza will identify them pursuant to the Federal Rules of Civil Procedure and the Local Rules. Forza reserves its right to supplement or delete from this list of individuals as more information is obtained through investigation and discovery. By listing any individual herein,

Forza does not waive its right to object to any discovery requests or deposition notices concerning such individual.

**B. A copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment.**

The following categories of documents may be used to support the claims asserted by Forza. However, Forza will not produce documents that are privileged or otherwise protected from disclosure in accordance with the Federal Rules of Civil Procedure. Forza identifies the following categories of documents and things, which are located at 181 West Madison Street, Suite 4600, Chicago, Illinois, 60602 and/or the offices of Forza.

1. Non-privileged company files of Forza.
2. Correspondence between Forza and Defendants.
3. Writings evidencing agreement between Forza and Defendants.
4. Development of Forza's products with Defendants.
5. Forza's products.
6. The effort, cost and expense in developing and producing Forza's products, including delays by Defendants.
7. Actions and inactions evidencing Defendants' breach of contract.
8. Damage and/or injury caused to Forza as a result of Defendants' breach of contract and other acts set forth in Forza's First Amended Complaint.

All documents and evidentiary materials that contain or reference confidential, proprietary, or otherwise protected business information will only be made available subject to the terms of the stipulated protective order. Additional documentary evidence and testimony that Forza may use to support its claims or defenses will be identified and produced as discovery



continues. Forza reserves the right to supplement and/or amend these initial disclosures if PRL and/or Forza locate or produce additional documents, including expert reports.

**C. A computation of any category of damages claimed by the disclosing party, making available for inspection and copying under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing the nature and extent of injuries suffered.**

Computation of damages will be produced following discovery from PRL and expert analysis. At this time, Forza seeks monetary damages adequate to compensate for Defendants' breach of contract. As one measure of damages for breach of contract, Forza intends to seek the value of its expected sales and profits had the terms of the agreement been performed fully and satisfactorily. Forza is also entitled to pre- and post-judgment interest. Scheid seeks monetary damages against PRL and Marshall for losses and injuries, plus interest and cost, sustained by the acts of tortious interference and unfair competition.

Forza intends to prove damages for breach of contract based at least in part upon its expectation of the position in which it otherwise would have been had Marshall and Premier fully performed their obligations to supply acceptable products meeting Forza's requirements and specifications. Forza believes that it could have sold substantial quantities of the products had they been timely delivered during the Olympic year and during the wrestling season as agreed by the parties. Supporting documents include, but are not limited to, Forza's Business Plan and its forecast of sales. Mia Scheid and Lee Kemp are most knowledgeable about Forza's expectancy and the sales and profit forecasts.

Forza anticipates that a qualified expert may rely upon at least the following as evidence of the injury sustained by Forza and directly caused by Defendants:

- The time, effort and money Forza spent for the creation and establishment of its business.

- The time, effort and money Forza spent for a license to be the exclusive supplier to USA Wrestling.

- The value of the time spent by employees of Forza, in particular, the amount of time spent above and beyond that required in the day-to-day operation of the business that was subsequently required as an effect of Defendants' conduct.

- Forza's accounting and legal expenses.

- Expenses paid to all third parties in relation to the Forza products contemplated in the parties' agreement including, but not limited to, WePackItAll, Chromatic Labels, Rockpoint Logistics, and Mudd Advertising.

Documents or other evidentiary material related to Forza's computation of damages and not privileged or protected from disclosure will be produced in accordance with the Agreed Protective Order.

**D. For inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.**

Not applicable.

Respectfully submitted,

/s/ Olivia T. Luk

Raymond P. Niro  
Olivia T. Luk  
Gabriel I. Opatken  
Niro, Haller & Niro  
181 West Madison Street, Suite 4600  
Chicago, Illinois 60602

*Attorneys for Forza Technologies, LLC.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 14, 2013 the foregoing

**PLAINTIFF'S SUPPLEMENTAL RULE 26(a)(1) DISCLOSURES**

was served upon the following counsel of record via electronic transmission.

Rakesh M. Amin  
Ryan M. Kaiser  
Amin Talati, LLC  
55 West Monroe Street, Suite 3400  
Chicago, Illinois 60603  
rakesh@amintalati.com  
ryan@amintalati.com

/s/ Olivia T. Luk  
NIRO, HALLER & NIRO  
Attorneys for Forza Technologies, LLC

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FORZA TECHNOLOGIES, LLC,

Plaintiff,

v.

PREMIER RESEARCH LABS, LP,

Defendant and Counterclaimant,

v.

FORZA TECHNOLOGIES, LLC,  
LEE KEMP and MIA SCHEID,

Counterclaim-Defendants.

---

MIA SCHEID,

Counterclaimant,

v.

PREMIER RESEARCH LABS, LP,

Counterclaim Defendant,

and

ROBERT J. MARSHALL,

Third-party Defendant.

---

Civil Action No. 12-cv-07905

Honorable Joan B. Gottschall

**PLAINTIFF'S SUPPLEMENTAL RULE 26(a)(1) DISCLOSURES**

In accordance with Fed.R.Civ.P. 26(a)(1) and the Court's Order (Dkt. 63), Plaintiff makes the following supplemental initial disclosures. These disclosures are preliminary and discovery is ongoing. Accordingly, Plaintiff reserves the right to supplement, correct, amend, or modify these disclosures based on new information.

**A. The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information.**

1. Mia Scheid  
Forza Technologies, LLC  
c/o Niro, Haller & Niro

As presently advised, Ms. Scheid may have discoverable information relating to the background of Forza Technologies, LLC (“Forza”); the relationship and business dealings between Forza and Premier Research Labs, LP (“Premier”); the relationship and business dealings between Forza and Robert J. Marshall (“Marshall”); the allegations of fraud and misrepresentations by Marshall and the harm caused by Premier and Marshall; tortious interference with business relations and prospective economic advantage by Marshall; unfair competition by Marshall; Premier’s Counterclaims; and Ms. Scheid’s Counterclaims.

2. Lee Kemp  
Forza Technologies, LLC  
c/o Niro, Haller & Niro

As presently advised, Mr. Kemp may have discoverable information relating to the background of Forza; the relationship and business dealings between Forza and Premier; the relationship and business dealings between Forza and Marshall; the allegations of fraud and misrepresentations by Marshall; the harm caused by Premier and Marshall; and Premier’s Counterclaims.

3. Woo Chun Paik  
Forza Technologies, LLC  
c/o Niro, Haller & Niro

As presently advised, Ms. Paik may have discoverable information relating to FORZA product formulations.

4. One or more employees, agents, contractors or representatives of Premier Research Labs, LP

As presently advised, one or more officers, directors, employees, partners, contractors, and/or managing agents of Premier (including but not limited to: Linda Forbes, Sibylle Naumer-Belcher, David Himel, Sharla Hughes, Brian Zielinski, Nick Labinsky, and Hesaam Moallem) may have discoverable information relating to the factual and legal bases for Premier's defenses and/or claims in this suit; the organizational structure of Premier; the employment and responsibilities of Marshall; how Premier regularly conducts business with other companies; the revenue of Premier; Marshall's fraud and misrepresentations; the breach of contract with Forza; harm caused by Premier and Marshall; Premier's Counterclaims; and Ms. Scheid's Counterclaims.

5. Robert J. Marshall

As presently advised, Mr. Marshall may have discoverable information relating to the factual and legal bases for Marshall's defenses in this suit; the organizational structure of Premier; his employment and responsibilities at Premier and/or other companies; how Premier regularly conducts business with other companies; the revenue of Premier; his fraud and misrepresentations; the breach of contract with Forza; and the harm caused by himself and Premier; his actions that have caused tortious interference with Ms. Scheid's business relations and prospective economic advantage; unfair competition; DHEA contamination; product mislabeling; manufacturing and cleaning protocols; personal financial resources; Premier's financial resources; Marshall's radio show and broadcast; Premier's Counterclaims; and Ms. Scheid's Counterclaims.

6. Hesaam Moallem  
3500 Wadley Place, Building B  
Austin, TX 78728

As presently advised and in light of Defendants' Initial Disclosures, Mr. Moallem is General Counsel at Premier, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, the relationship between the parties, including damages; DHEA contamination; product mislabeling; manufacturing and cleaning protocols; Premier's Counterclaims; and Ms. Scheid's Counterclaims.

7. Stephen Lermer

As presently advised and in light of Defendants' Initial Disclosures, Mr. Lermer is the former VP of Operations at Premier, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, the relationship between the parties, the manufacture of FORZA products, including damages; DHEA contamination; product mislabeling; manufacturing and cleaning protocols; Premier's Counterclaims; and Ms. Scheid's Counterclaims.

8. Sibylle Naumer-Belcher  
3500 Wadley Place, Building B  
Austin, TX 78728

As presently advised and in light of Defendants' Initial Disclosures, Ms. Naumer-Belcher is the Production Manager at Premier, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, the relationship between the parties, the manufacture of FORZA products, including damages; DHEA contamination; product mislabeling; manufacturing and cleaning protocols; Premier's Counterclaims; and Ms. Scheid's Counterclaims.

9. Andrea Hall

As presently advised and in light of Defendants' Initial Disclosures, Ms. Hall was the Quality Manager at Premier, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, the relationship between the parties, manufacturing and cleaning protocols, DHEA contamination, product mislabeling, and the manufacture of FORZA products, including damages.

10. Sharlee LaLime

As presently advised, Ms. LaLime was an employee at Premier, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, the relationship between the parties, and the manufacture of FORZA products, including damages.

11. Nick Labinsky  
3500 Wadley Place, Building B  
Austin, TX 78728

As presently advised and in light of Defendants' Initial Disclosures, Mr. Labinsky was the Laboratory Supervisor at Premier during the time FORZA products were being manufactured, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, the relationship between the parties, DHEA contamination, product mislabeling, manufacturing and cleaning protocols, and the manufacture of FORZA products, including damages. As presently advised, Mr. Labinsky is now the Product Development Supervisor at Premier.

12. Brian Zielinski  
3500 Wadley Place, Building B  
Austin, TX 78728



As presently advised and in light of Defendants' Initial Disclosures, Mr. Zielinski was the Quality Engineer at Premier during the time FORZA products were being manufactured, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, the relationship between the parties, DHEA contamination, product mislabeling, manufacturing and cleaning protocols, and the manufacture of FORZA products, including damages. As presently advised, Mr. Zielinski is now the Quality Assurance Manager at Premier.

13. Dr. Roger J. Geronimo  
1625 Bay Hawk Lane or 1645 Bay Hawk Lane  
St. Augustine, FL 32084

As presently advised, Dr. Geronimo is President of Columbia Pacific University, and may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Marshall's education.

14. Dennis Gronek, Esq.  
Gronek & Associates  
[fdalaw@gronekassociates.com](mailto:fdalaw@gronekassociates.com)  
(312) 655-1800

As presently advised, Mr. Gronek may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, the relationship between the parties, and the manufacture of FORZA products, including damages. However, Forza does not intend to call Mr. Gronek as a witness in this lawsuit. Any knowledge or information Mr. Gronek may have is privileged.

15. Tim Harms  
Contact through counsel

Mr. Harms may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, the relationship between the

parties, and the manufacture of FORZA products, including damages. However, Forza does not intend to call Mr. Harms as a witness in this lawsuit.

16. Brad Martin  
Address unknown

Mr. Martin may have discoverable information relating to the allegations in the First Amended Complaint, including knowledge of Premier, Marshall, the relationship between the parties, and the manufacture of FORZA products, including damages. However, Forza does not intend to call Mr. Martin as a witness in this lawsuit.

17. One or more persons involved with Rock Point Logistics  
901 Bilter Rd.  
Aurora, IL 60502

As presently advised, one or more persons at Rock Point Logistics, including but not limited to Gil De La Paz, may have knowledge of Premier, Marshall, and the relationship between the parties, including damages. However, Forza does not intend to call any employee from Rock Point Logistics as a witness in this lawsuit.

18. One or more persons involved with WePackItAll  
2745 Huntington Dr.  
Duarte, CA 91010

As presently advised, one or more persons at WePackItAll, including but not limited to Sharla Hughes, may have knowledge of Premier, Marshall, and the relationship between the parties, including damages. However, Forza does not intend to call any employee from WePackItAll as a witness in this lawsuit.

19. One or more persons involved with Chromatic Labels  
16782 Von Karman Ave.  
Building 33  
Irvine, CA 92606

As presently advised, one or more persons at Chromatic Labels, including but not limited to Mark Oshman, may have knowledge of Premier, Marshall, and the relationship between the parties, including damages. However, Forza does not intend to call any employee from Chromatic Labels as a witness in this lawsuit.

20. One or more persons involved with Mudd Advertising  
211 West Wacker Drive (2<sup>nd</sup> Floor)  
Chicago, IL 60606

As presently advised, one or more persons at Mudd Advertising may have knowledge of Premier, Marshall, and the relationship between the parties, including damages. However, Forza does not intend to call any employee from Mudd Advertising as a witness in this lawsuit.

21. One or more persons involved with Logic PAKaging, Inc.  
3530 W. Lake Center Drive  
Santa Ana, CA 92704

As presently advised, one or more persons at Logic PAKaging, Inc., including but not limited to Lori Robinson, may have knowledge of Premier, Marshall, and the relationship between the parties, including damages. However, Forza does not intend to call any employee from Logic PAKaging, Inc. as a witness in this lawsuit.

22. As presently advised, various third parties who were formerly employed by Marshall and/or Premier and/or offered employment by Marshall and/or Premier in Premier's Santa Monica (or other) office may have knowledge of Premier, Marshall, and the relationship between the parties, including damages.

23. Jennifer Gibson  
U.S. Olympic Committee  
1 Olympic Plaza  
Colorado Springs, CO 80909

Ms. Gibson may have knowledge of harm suffered by Forza as a result of contaminated product manufactured by Premier.

24. Becky Achen  
The National Center for Drug Free Sport, Inc.  
2537 Madison Ave.  
Kansas City, MO 64108

Ms. Achen may have knowledge of harm suffered by Forza as a result of contaminated product manufactured by Premier.

25. Kevin Jackson  
Iowa State Head Wrestling Coach  
Jacobson Athletic Building  
Ames, Iowa 50011-1140

Mr. Jackson may have knowledge relating to harm suffered by Forza, including damages. However, Forza does not intend to call Mr. Jackson as a witness in this lawsuit.

26. Tim Weesner  
Iowa State Wrestling, Athletic Trainer  
Jacobson Athletic Building  
Ames, Iowa 50011-1140

Mr. Weesner may have knowledge relating to harm suffered by Forza, including damages. However, Forza does not intend to call Mr. Weesner as a witness in this lawsuit.

27. Larry Nugent  
USA Wrestling  
6155 Lehman Drive  
Colorado Springs, CO 80918

Mr. Nugent may have knowledge relating to harm suffered by Forza, including damages. However, Forza does not intend to call Mr. Nugent as a witness in this lawsuit.

28. Mike Ripley  
Contact through counsel

Mr. Ripley may have knowledge relating to harm suffered by Forza, including damages. However, Forza does not intend to call Mr. Ripley as a witness in this lawsuit.

29. Cheyenne Johnson  
Address unknown

Ms. Johnson may have discoverable information relating to the allegations in the First Amended Complaint. However, Forza does not intend to call Ms. Johnson as a witness in this lawsuit.

To the extent additional individuals with knowledge relevant to this dispute are identified, Forza will identify them pursuant to the Federal Rules of Civil Procedure and the Local Rules. Forza reserves its right to supplement or delete from this list of individuals as more information is obtained through investigation and discovery. By listing any individual herein, Forza does not waive its right to object to any discovery requests or deposition notices concerning such individual.

**B. A copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment.**

The following categories of documents may be used to support the claims asserted by Forza. Forza has produced document responsive to discovery served by Premier. However, Forza will not produce documents that are privileged or otherwise protected from disclosure in accordance with the Federal Rules of Civil Procedure. Forza identifies the following categories of documents and things, which are located at 181 West Madison Street, Suite 4600, Chicago, Illinois, 60602 and/or the offices of Forza.

1. Non-privileged company files of Forza.
2. Correspondence between Forza and Defendants.
3. Writings evidencing agreement between Forza and Defendants.
4. Development of Forza's products with Defendants.

5. Forza's products.
6. The effort, cost and expense in developing and producing Forza's products, including delays by Defendants.
7. Analyses of products supplied by PRL and labels for such products.
8. Actions and inactions evidencing Defendants' breach of contract.
9. Damage and/or injury caused to Forza as a result of Defendants' breach of contract and other acts set forth in Forza's First Amended Complaint.

All documents and evidentiary materials that contain or reference confidential, proprietary, or otherwise protected business information are subject to the terms of the stipulated protective order. Additional documentary evidence and testimony that Forza may use to support its claims or defenses will be identified and produced as discovery continues. Forza reserves the right to supplement and/or amend these supplemental disclosures if Premier and/or Forza locate or produce additional documents, including expert reports.

**C. A computation of any category of damages claimed by the disclosing party, making available for inspection and copying under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing the nature and extent of injuries suffered.**

Computation of damages will be produced following discovery from Premier and expert analysis. At this time, Forza seeks monetary damages adequate to compensate for Defendants' breach of contract. As one measure of damages for breach of contract, Forza intends to seek the value of its expected sales and profits had the terms of the agreement been performed fully and satisfactorily. Forza is also entitled to pre- and post-judgment interest. Ms. Scheid seeks monetary damages against Premier and Marshall, to be determined through discovery and at

trial, for losses and injuries, plus interest and cost, sustained by the acts of tortious interference and unfair competition.

Forza intends to prove damages for breach of contract based at least in part upon its expectation of the position in which it otherwise would have been had Marshall and Premier fully performed their obligations to supply acceptable products meeting Forza's requirements and specifications, including properly labeled products that accurately reflected the actual contents of each product and products that would not be red-listed because of the presence of banned substances. Forza believes that it could have sold substantial quantities of properly labeled products had they been timely delivered during the Olympic year and during the wrestling season as agreed by the parties. Supporting documents include, but are not limited to, Forza's Business Plan and its forecast of sales. Ms. Scheid and Mr. Kemp are most knowledgeable about Forza's expectancy and the sales and profit forecasts.

Forza anticipates that a qualified expert may rely upon at least the following as evidence of the injury sustained by Forza and directly caused by Defendants:

- The time, effort and money Forza spent for the creation and establishment of its business.
- The time, effort and money Forza spent for a license to be the exclusive supplier to USA Wrestling.
- The value of the time spent by employees of Forza, in particular, the amount of time spent above and beyond that required in the day-to-day operation of the business that was subsequently required as an effect of Defendants' conduct.
- Forza's accounting and legal expenses.

- Expenses paid to all third parties in relation to the Forza products contemplated in the parties' agreement including, but not limited to, WePackItAll, Chromatic Labels, Rockpoint Logistics, Logic PAKaging, and Mudd Advertising.
- Projected volumes of sales and profits.

Documents or other evidentiary material related to Forza's computation of damages and not privileged or protected from disclosure will be produced in accordance with the Agreed Protective Order.

**D. For inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.**

Not applicable.

Respectfully submitted,

/s/ Olivia T. Luk  
Raymond P. Niro  
Olivia T. Luk  
Gabriel I. Opatken  
Niro, Haller & Niro  
181 West Madison Street, Suite 4600  
Chicago, Illinois 60602  
Tel: (312) 236-0733  
Fax: (312) 236-3137  
*Attorneys for Forza Technologies, LLC*



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on July 26, 2013 the foregoing

**PLAINTIFF'S SUPPLEMENTAL RULE 26(a)(1) DISCLOSURES**

was served upon the following counsel of record via electronic transmission.

Rakesh M. Amin  
Ryan M. Kaiser  
Saira J. Alikhan  
AMIN TALATI, LLC  
55 West Monroe Street, Suite 3400  
Chicago, Illinois 60603  
[ryan@amintalati.com](mailto:ryan@amintalati.com)  
[rakesh@amintalati.com](mailto:rakesh@amintalati.com)  
[saira@amintalati.com](mailto:saira@amintalati.com)  
Tel: (312) 327-3328  
Fax: (312) 884-7352  
*Attorneys for Defendants*

/s/ Olivia T. Luk  
NIRO, HALLER & NIRO  
*Attorneys for Forza Technologies, LLC*

EXHIBIT

G

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FORZA TECHNOLOGIES, LLC,       )  
                                  Plaintiffs,    )  
                                  vs.                ) Civil No. 12-cv-07905  
PREMIER RESEARCH LABS, LP     )  
and ROBERT J. MARSHALL,        )  
individually,                    )  
                                  Defendants.     )

THE DEPOSITION OF LEROY P. KEMP

July 24, 2014

Chicago, Illinois

9:01 a.m.

Reported By:  
Cynthia J. Conforti, CSR, RPR, CRR  
Job No. 35098

166

1           **DEPOSITION OF LEROY P. KEMP**  
2       A.    That's true. However, wrestling is  
3   year round, but we took into consideration that  
4   there was going to be a group that will just be more  
5   seasonal.  
6       **Q.    Okay. And in the next subheading,**  
7   **four, it says:**  
8           **After one year with club or program,**  
9   **wrestler will -- wrestler will forecasted to buy**  
10 **every month or buy entire 12 months.**  
11           **So in the table at the top of this**  
12 **page, it estimates the first three years' sales. It**  
13 **looks like you've assumed that by year two the**  
14 **wrestlers that were only taking four months worth of**  
15 **product would now be buying the product 12 months**  
16 **out of the year. Is that accurate?**  
17       A.    Yes.  
18       **Q.    And what did you base that forecast**  
19 **on?**  
20       A.    The key thing was the referrals from  
21   the high level athletes. If -- if they were using  
22   the products repeatedly, visible to high school  
23   wrestlers, we felt that if they -- we could get them  
24   on the products for a year, have success with the  
25   endorsements from high level athletes like Jordan

167

1           **DEPOSITION OF LEROY P. KEMP**  
2   Burroughs, we felt that we could get that type of  
3   consistency out of athletes.  
4       **Q.    Okay. And did -- did Jordan Burroughs**  
5 **ever provide a testimonial for Forza's products?**  
6       A.    He sampled them while he was at the  
7   Olympic trials, and he on air gave us his own -- his  
8   own feelings about the products.  
9       **Q.    And did that result in your estimation**  
10 **here that the wrestlers would go from buying four**  
11 **months of products in year one to buying an entire**  
12 **12 months in year two? Did it have the effect that**  
13 **you intended for it to have?**  
14       A.    Well, it didn't have the effect  
15   because we didn't have the product. We didn't have  
16   the other endorsements that we needed. We didn't  
17   have not just Iowa State, but hopefully, you know,  
18   four or five universities, and the Olympic team was  
19   comprised of eight individuals. We didn't have the  
20   other seven individuals. We didn't have product.  
21   We didn't have the ability to get them on the  
22   product.  
23           See, after the Olympic trials in  
24   April, they were going to be training all the way  
25   through until July, and my goal was to be at the

168

1           **DEPOSITION OF LEROY P. KEMP**  
2   training center with product teaching them how to  
3   use it. Mia was making her schedule available to be  
4   there as well.  
5           The executive director or our contact  
6   within USA Wrestling said that because their offices  
7   are right in Colorado Springs that a lot of athletes  
8   come through their office, and he said, "Lee, if  
9   your product is available and athletes are using it,  
10  you're going to get some traction," but those two  
11  things didn't happen. It wasn't available. We  
12  didn't even have product to even give to them for a  
13  long time.  
14       **Q.    Well, you had it in April of 2012;**  
15 **right?**  
16       A.    In small quantities. I mean it was  
17   just a small quantity that came to Iowa City to the  
18   Olympic trials. Literally it was just...  
19       **Q.    When did you get a large quantity?**  
20       A.    I don't know exactly. It was after  
21   that.  
22       **Q.    Was it a week after?**  
23       A.    No, it was -- I'd have to look at our  
24   sales records.  
25       **Q.    Well -- okay. What did a month's**

169

1           **DEPOSITION OF LEROY P. KEMP**  
2 **supply of the Forza program cost?**  
3       A.    Somewhere around 130 bucks, something  
4   like that. I'd have to actually -- I think that may  
5   actually even be in here.  
6       **Q.    A full year's supply though --**  
7       A.    Full year --  
8       **Q.    -- estimated would cost about 1,500**  
9 **bucks; right?**  
10       A.    Yes.  
11       **Q.    Did Forza do any research to determine**  
12 **whether a high school wrestler or even a club**  
13 **wrestler aged 8 to 14 would be willing to pay \$1,500**  
14 **a year for a dietary supplement?**  
15       A.    What we knew, what I knew and Mia knew  
16   that athletes were buying nutritional products  
17   anyway, and I looked at research. I mean it's just  
18   readily available on-line, but even in my own  
19   personal experience with coaches, most athletes are  
20   taking at least a protein supplement anyway.  
21   They're going to GNC and buying it and paying 30  
22   bucks, 30 to 40 bucks a month on just protein. But  
23   we knew that athletes were spending a lot more than  
24   that for other things.  
25       **Q.    How did you know that? How did you**

170

1           **DEPOSITION OF LEROY P. KEMP**  
2   **know that 18 -- 8 to 14 year olds were spending more**  
3   **than 40 bucks a month on supplements?**  
4       A.   Coaches would tell me that. I would  
5   ask the question. I -- personal experience, what I  
6   used myself when I competed. Advocare, the -- the  
7   key representative from Advocare. They had a whole  
8   line of products that they sold to wrestlers, and  
9   they successfully did it for two Olympic cycles.  
10   **Q.   Did Advocare tell you how much revenue**  
11   **they generated from sales to wrestlers?**  
12       A.   No.  
13   **Q.   Did you ask them?**  
14       A.   All I asked was, "Was it lucrative for  
15   you and were you successful?" And he said, "yes."  
16   **Q.   How big of a company is Advocare?**  
17       A.   I don't know.  
18   **Q.   Do you know how long they have been in**  
19   **business?**  
20       A.   No.  
21   **Q.   Do you know how many products they**  
22   **sell?**  
23       A.   No.  
24   **Q.   Do you know what their annual revenue**  
25   **is?**

171

1           **DEPOSITION OF LEROY P. KEMP**  
2       A.   No.  
3   **Q.   So you don't know what their avenue**  
4   **revenue towards wrestlers is?**  
5       A.   No.  
6   **Q.   If it was so lucrative, Advocare's**  
7   **deal with USA Wrestling, if that was so lucrative**  
8   **for Advocare, why did they stop?**  
9       A.   My -- I don't know exactly. So I  
10   can't even -- all I know is it was a multilevel  
11   marketing company, first of all, and the guy who  
12   spearheaded that was the Olympic coach and a college  
13   coach, so his effort translated into a lot of sales  
14   in that whole pyramid thing. And so his -- and he  
15   made a lot of money from it, from his influence as  
16   being the Olympic coach, being a college coach. He  
17   was a coach at Oklahoma State University, a major  
18   college program, and he was the Olympic coach when  
19   -- when they won the team title, which was  
20   unprecedented.  
21       And he used all that to help promote  
22   the product, the fact that he was the Olympic coach,  
23   the fact that the athletes were on it, visibly on  
24   it, and I was there during that time watching all  
25   that.

172

1           **DEPOSITION OF LEROY P. KEMP**  
2       **Q.   You said that they were an M -- that**  
3   **Advocare is an MLM company. What does that mean?**  
4       A.   A multilevel marketing company.  
5       **Q.   Is that a different business model**  
6   **than the one Forza follows?**  
7       A.   I don't know anything about multilevel  
8   marketing companies other than the guy I'm referring  
9   to didn't own Advocare like I own Forza. He became  
10   a distributor of Advocare.  
11       **Q.   So he was a distributor in a**  
12   **multilevel marketing company.**  
13       A.   Um-hmm.  
14       **Q.   Okay. And you're not aware of how**  
15   **multilevel marketing companies work.**  
16       A.   I have some inkling of that whole  
17   thing I guess, but not really, no.  
18       **Q.   Well, what -- well, is that a no or**  
19   **a --**  
20       A.   No, I don't -- I don't know how that  
21   works. I know that he was a distributor, and he got  
22   -- he got a commission on everything that was sold,  
23   and he sold a lot of product using his influence as  
24   an Olympic coach, using his influence as a college  
25   coach, and a lot of guys were on it.

173

1           **DEPOSITION OF LEROY P. KEMP**  
2       I remember being at the training camps  
3   and having -- all the top guys would be -- after  
4   practice they'd be all taking the stuff, and there  
5   would be high school wrestlers around, and, you  
6   know, he hustled like I'm trying to hustle. You  
7   know, he got the -- he got himself out there.  
8       MR. VICKREY: Before another question  
9   is asked, could we take a lunch break? It's 12:33.  
10       MR. KAISER: Yeah, you know what? I  
11   just have -- I mean I'm like three or four lines  
12   away from the close of this document, so why don't  
13   we do that. Maybe five minutes.  
14       MR. VICKREY: Okay.  
15   BY MR. KAISER:  
16       **Q.   All right. So just to wrap up on**  
17   **this, Forza's not an MLM company.**  
18       A.   No.  
19       **Q.   It practices a different business**  
20   **model entirely.**  
21       A.   [Nonverbal response.]  
22       **Q.   Oh, yeah. What is the name of this**  
23   **man that you're referring to at Advocare?**  
24       A.   His name was Joe, Joseph Seay,  
25   S-E-A-Y.